No. 00-9280

In The

Supreme Court of the United States

WILLIAM ARTHUR KELLY,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of South Carolina

JOINT APPENDIX
Volume I, Pages 1-155

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TABLE OF CONTENTS

Page

VOLUME I

Chronological List of Relevant Docket Entries..... 1

Pleadings

Indictment for Murder, Kidnaping, Armed Robbery and Possession or Display of a Knife During the Commission of a Violent Crime..... 2

Trial Transcript

Opening Statement by the Solicitor 5

Testimony of Timothy Crowley 16

Testimony of Steven M. Derrick 27

Testimony of Dr. Joel S. Sexton 34

Closing Arguments by the Solicitor 45

Preliminary Instructions to the Jury-Sentencing Phase Begins 61

Opening Statement by the Solicitor, Sentencing Phase 63

Testimony of Charles Jordan, III 68

Testimony of Jackie D. Granger..... 87

Testimony of Felix E. Williams..... 103

Testimony of Matthew McCormack 119

Testimony of Mark Wharton..... 139

Testimony of Edward D. Bryant 144

TABLE OF CONTENTS – Continued

Page

VOLUME II

Testimony of Dr. Joel S. Sexton 156
Testimony of Dr. Steven Shea 178
Testimony of James E. Aiken 220
Motions 243
Discussion of Requests to Charge 249
Closing Arguments by the Solicitor 254
Closing Arguments by the Defense 276
Charge to the Jury 280

Sentencing
Verdict 305
Motions 307
Defense Requests to Charge 311
Defense Proposed Requests to Charge 312
Supreme Court Opinion 313
Supreme Court Order 344
U.S. Supreme Court Order 345

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

November 11, 1996	Petitioner indicted for murder, kidnaping, armed robbery, and possession or display of a knife during a crime of violence.
February 16, 1998	Petitioner arraigned in Lexington County Court of General Sessions.
September 14, 1998	Jury selection begins in Lexington County Court of General Sessions.
September 16, 1998	Trial begins.
September 17, 1998	Trial jury finds petitioner guilty as charged.
September 18, 1998	Penalty phase begins.
September 19, 1998	Sentencing jury returns death sentence, and court imposes death sentence on petitioner.
January 8, 2001	South Carolina Supreme Court affirms convictions and death sentence.
February 7, 2001	South Carolina Supreme Court grants stay of execution pending petition for writ of certiorari.
April 5, 2001	Petition for writ of certiorari filed.
June 25, 2001	Petition for writ of certiorari granted.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR **COUNT ONE** – MURDER; **COUNT TWO** – KIDNAPPING; **COUNT THREE** – ARMED ROBBERY; and **COUNT FOUR** – POSSESSION OR DISPLAY OF A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME
COUNTY OF LEXINGTON	)	

At a Court of General Sessions, convened on November 11, 1996, the Grand Jurors of Lexington County present upon their oath:

COUNT ONE – MURDER

That WILLIAM ARTHUR KELLY, did in Lexington County on or about January 5, 1996, willfully, feloniously and with malice aforethought kill one SHIRLEY S. SHEALY by means of stabbing, cutting and wounding the victim numerous times with a knife, and the said SHIRLEY S. SHEALY died in Lexington County on or about January 5, 1996, as a result of exsanguination due to incised wounds of the neck and multiple stab wounds to the back and chest.

COUNT TWO – KIDNAPPING

That **WILLIAM ARTHUR KELLY** did in Lexington County on or about January 5, 1996, unlawfully and feloniously seize, confine, inveigle, decoy, kidnap, abduct or carry away SHIRLEY S. SHEALY, in that WILLIAM ARTHUR KELLY did unlawfully deprive SHIRLEY S.

SHEALY of her freedom without authority of law and in violation of § 16-3-910 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

/s/ Donald Myers
SOLICITOR

COUNT THREE – ARMED ROBBERY

That **WILLIAM ARTHUR KELLY** did in Lexington County on or about January 5, 1996, while armed with a deadly weapon, to wit: a knife, unlawfully and feloniously take from the person or in the presence of SHIRLEY S. SHEALY by means of force or intimidation goods, monies or other personal items of the said SHIRLEY S. SHEALY and/or Kentucky Fried Chicken at 431 West Columbia Avenue in Batesburg-Leesville, such goods, monies or other personal items being described: Lawful U.S. coins and/or currency, or other personal property items, all in violation of § 16-11-330 of the South Carolina Code of Laws (1976), as amended.

COUNT FOUR – POSSESSION OR DISPLAY OF A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

That **WILLIAM ARTHUR KELLY** did in Lexington County on or about January 5, 1996, willfully and unlawfully have in his possession, or did visibly display, a knife during the commission of a violent crime or crimes, to wit: Murder and/or Armed Robbery, as

defined in § 16-1-60, all in violation of § 16-23-490 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

/s/ Donald V. Myers
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

[Caption Omitted In Printing]

TRIAL TRANSCRIPT

OPENING STATEMENTS BY THE SOLICITOR

* * *

[1243] WE'LL NOW BEGIN THE TRIAL OF THE CASE. OPENING STATEMENTS, SOLICITOR.

THE SOLICITOR: MAY IT PLEASE THE COURT. MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY,

[1244] YOU HAVE BEEN INTRODUCED TO EVERYBODY. AND I'M GOING TO DO IT AGAIN BECAUSE YOU ARE GOING TO SEE THESE PEOPLE FOR THE NEXT FEW DAYS.

MY NAME IS DONNIE MYERS. I'M YOUR SOLICITOR AND SEATED AT COUNSEL TABLE HERE ASSISTING ME IS TOM CHASE AND FRAN HUMPHRIES. AND IN *THE STATE VERSUS WILLIAM ARTHUR KELLY*, WE REPRESENT THE STATE.

MR. KELLY OVER THERE IS REPRESENTED BY MS. BETH FULLWOOD, WES KIRKLAND, HERVERY YOUNG. AND THEY REPRESENT THE DEFENDANT.

AND YOU KNOW MONDAY WHEN I READ OUT THAT INDICTMENT AND WHEN JUDGE CLARY EXPLAINED IT TO YOU, I'M SURE SOMEONE IN THE COURTROOM SAID, DO WHAT? MURDER. ARMED

ROBBERY. KIDNAPPING. USE OF A KNIFE IN A VIOLENT CRIME. HOW COULD SOMEBODY DO THAT TO ANOTHER HUMAN BEING? YOU MAY HAVE THOUGHT THE DEFENDANT WAS ANOTHER LAWYER OVER THERE LOOKING AT HIM. HE DID IT. AND IT'S NOT GOING TO BE PRETTY. WITH HIS HANDS, HE MURDERED.

MURDER IS THE TAKING OF THE LIFE OF ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT. HE DID THAT.

ARMED ROBBERY. THAT'S STEALING BY PUTTING SOMEBODY IN FEAR WITH FORCE AND INTIMIDATION WITH A DEADLY WEAPON AND STEALING FROM THEM. HE DID THAT.

KIDNAPPING. UNLAWFULLY SEIZING, CONFINING, ABDUCTING ANOTHER HUMAN BEING WITH FORCE OR INTIMIDATION [1245] WITH ANY TYPE OF MEANS WITHOUT AUTHORIZATION UNDER THE LAW. HE DID THAT.

POSSESSION OF A KNIFE DURING A VIOLENT CRIME. ARMED ROBBERY AND MURDER ARE VIOLENT CRIMES. AND, FOLKS, HE HAD A KNIFE. YOU ARE GOING TO HEAR WHAT HE DID WITH THAT KNIFE. HE DID THAT. ALL TO A YOUNG WOMAN NAME [sic] SHIRLEY SHEALY ON FRIDAY, JANUARY THE 5TH, 1996, SHORTLY AFTER 10:30 P.M. AT THE KENTUCKY FRIED CHICKEN RESTAURANT IN BATESBURG, SOUTH CAROLINA, IN LEXINGTON COUNTY.

IF YOU WILL TAKE THE ROAD IN FRONT OF THE COURTHOUSE AND TAKE HIGHWAY ONE AND GO UP TO BATESBURG-LEESVILLE AND YOU GET UP THERE IN THAT AREA AND THE ROAD FORKS OFF, 23 GOES TO THE RIGHT AND HIGHWAY ONE GOES TO THE LEFT. GO ON DOWN THROUGH TOWN, YOU GO PAST SHEALY'S BARBECUE. EVERYBODY KNOWS WHERE SHEALY'S IS. I EAT THERE TOO MUCH MYSELF SOMETIMES. THEN YOU GO ON PAST THAT AND GET ON DOWN THERE IN BATESBURG AND THAT AREA, KENTUCKY FRIED CHICKEN IS ON THE RIGHT. YOU ARE GOING TO HEAR A LOT ABOUT THAT, FOLKS.

SHIRLEY WAS THE MANAGER THERE. HE [KELLY] HAD WORKED THERE IN 1995. HE KNEW ABOUT THE PLACE. HE KNEW THE ACTIVITIES. HE KNEW THE COURSE OR THE CONDUCT OF THE BUSINESS. HE QUIT IN DECEMBER OF '95. BUT FOR SOME REASON, HE CAME BACK ON FRIDAY, JANUARY THE 5TH OF 1996. HE STAYED AROUND THERE A GOOD BIT THAT AFTERNOON. SHIRLEY [1246] WAS WORKING; OTHER PEOPLE WERE WORKING. SOME OF HIS FORMER ASSOCIATES THAT HE WORKED WITH. HE LEFT ABOUT DARK AND HIS PLAN WAS ALREADY IN MOTION. SHIRLEY HAD LESS THAN A FEW HOURS TO LIVE BECAUSE HE KNEW WHAT HE WAS GOING TO DO. HE KNEW WHAT HE WAS GOING TO DO BECAUSE HE HAD SOMETHING IN HIS HEART CALLED LUST. LUST FOR THE ALMIGHTY GREENBACK DOLLAR. HE HAD MURDER ON HIS MIND AND LUST IN HIS HEART FOR THAT MONEY AND BE DAMN IF ANYBODY GETS IN HIS WAY.

SHIRLEY WAS HIS TARGET. YOU ARE GOING TO SEE A BUNCH OF EXHIBITS. YOU ARE GOING TO SEE A BUNCH OF DIAGRAMS. AND YOU ARE GOING TO HEAR WITNESSES TESTIFY ABOUT IT. YOU ARE GOING TO HEAR SOME PEOPLE TESTIFYING ABOUT THAT NIGHT, CLOSING UP. TWO LADIES THERE TO CLEAN UP. THEY CUT OUT THE LIGHTS ABOUT TEN AND THEN THEY HAVE TO CLEAN UP FOR AWHILE. TWO FOLKS WERE THE LAST TWO TO WALK OUT OF THE KENTUCKY FRIED CHICKEN, SHIRLEY SHEALY AND A LADY NAME MS. BARBARA ADAMS. THEY GO OUT AND GET IN THEIR CARS. SHIRLEY LEAVES FIRST. SHE COMES OUT OF THE KENTUCKY FRIED CHICKEN. YOU ARE GOING TO SEE THIS DIAGRAM. THIS IS IT RIGHT HERE (INDICATES). THIS IS THE KENTUCKY FRIED CHICKEN PLACE IN BATESBURG. SHEALY'S IS RIGHT THERE (INDICATES). LEXINGTON. DOWN HERE IS GOING DOWN TOWARDS AIKEN. YOU GO IN HERE, YOU COME AROUND.

WHEN THEY WENT OUT THAT NIGHT, SHIRLEY GOT IN HER CAR BACK HERE BY THIS GARBAGE DUMPSTER (INDICATES). MS. [1247] ADAMS GOT IN HER CAR HERE (INDICATES) SHIRLEY PULLED OUT TO TAKE A RIGHT TO GO DOWN TO THE STOPLIGHT WHERE SHE WOULD GO HOME. MS. ADAMS STAYED THERE FOR AWHILE FOR HER CAR TO WARM UP AND THEN SHE LEFT. LITTLE DID MS. ADAMS KNOW THAT WOULD BE THE LAST TIME SHE WOULD SEE HER FRIEND SHIRLEY SHEALY.

SHIRLEY GOES ON DOWN THE ROAD. HE STARTS HIS PLAN. HE ABDUCTS HER. HE WAS IN HER CAR. SHE DOESN'T KNOW IT. HE'S GOT A KNIFE. THEY

CALL IT A SKIN-DIVING KNIFE. IT'S AN UGLY LOOKING THING. IT'S SHARP. HE MAKES HER GO BACK TO THAT KENTUCKY FRIED CHICKEN. WHY? HE KNOWS THE MONEY IS IN THE SAFE. WHY HER? SHE KNOWS THE COMBINATION. AND WHY DOES HE TAKE HER BACK? LUST FOR THE GREENBACK DOLLAR.

HE MAKES HER PULL UP, STOPS THE CAR RIGHT HERE (INDICATES). THERE ARE TWO WAYS TO GET IN. YOU CAN GO IN THROUGH THE DOOR ON THIS SIDE, THE DOOR ON THE OTHER SIDE. HE MAKES HER GO INTO THE DOOR RIGHT THERE WHERE HER CAR IS. HER CAR IS STILL RUNNING. HER DOOR IS OPEN. WHEN HE GETS OUT THE BACK, HE KNOCKS OUT A PIECE OF PAPER THAT'S DOWN THERE ON THE GROUND. HE GOES INSIDE. HE MAKES HER OPEN THE SAFE FOR WHAT HE WANTS. OVER 13 HUNDRED DOLLARS IN THAT SAFE. SHE HAD PUT IT IN THERE SHORTLY BEFORE WHEN SHE MADE HER ACCOUNTING. SHE HAD EVEN WRITTEN OUT IN HER HAND SOME OF THE MONEY SHE HAD PUT IN THERE. YOU ARE GOING [1248] TO SEE THAT.

WHEN THE MONEY'S GOTTEN OUT OF THE SAFE, THEN HE TAPES HER HANDS BEHIND HER BACK WITH DUCT TAPE. HE TRIES TO TAPE HER TO A CHAIR. THERE IS SOME DUCT TAPE AROUND A CHAIR HE TRIED TO TAPE HER LEG TO AND THEN HE BEGINS TO WORK ON HER WITH HIS KNIFE.

HE'S STABBING HER ALL OVER THE PLACE. SHE'S ABLE TO GET LOOSE FROM THAT CHAIR. A

LITTLE SMALL OFFICE, NO BIGGER THAN THIS WITNESS BOX IN HERE WHERE THE SAFE IS DOWN IN THE FLOOR. IT'S JUST A HOLE IN THE FLOOR. THEY GO FROM AROUND THAT AREA, FIGHTING, SCUFFLING, RIGHT ON TO THE BACK OF THE STORE.

THERE'S BLOOD, FOLKS, EVERYWHERE. THAT SECOND PART IS WHERE HE FINISHES HER OFF. HE STABBED HER OVER THIRTY TIMES. HE SLIT HER THROAT FROM SIDE-TO-SIDE. HE CUT HER ON THE SIDE OF THE NECK. HE CUT HER FROM THE TOP OF HER HEAD DOWN TO HER BACK. HE CUT HER ON THE BACK. HE CUT HER IN HER NECK, CUT HER UNDER HER BREASTS, ON THE SIDE AND JUST RIPPED HER BACK FROM EVERYWHERE IMAGINABLE. THAT'S WHAT HE DID.

AND IN SCOOPING UP HIS LUST FOR MONEY AND HIS MONEY, HE WAS INTERRUPTED. HE WAS INTERRUPTED BY A POLICE OFFICER WHO JUST HAPPENED TO COME BY. HE SAW THE CAR, SAW THE CAR RUNNING, SAW THE DOOR OPEN AND HE SAID, NOW, WAIT A MINUTE, SOMETHING'S NOT RIGHT HERE. I GO IN THAT PLACE TO [1249] EAT AND THEY CLOSE THE LIGHTS AT TEN AND THE LIGHTS ARE ON INSIDE. SOMETHING IS NOT RIGHT.

SO THIS POLICE OFFICER GOES DOWN – AS HE PASSED THE PLACE, HE TURNS AROUND AND HE COMES BACK. NO OTHER CAR IS AROUND, BUT SHIRLEY'S. AND WHEN HE PULLS IN HERE, HE SEES SOMEBODY INSIDE, DUCKED DOWN. NEARLY CAUGHT HIM THERE. HE CAME THAT CLOSE.

THE OFFICER PULLS ON AROUND HERE TO WHERE SHIRLEY'S CAR IS AND WHEN HE DOES, THE DEFENDANT JUMPS OUT OF THIS DRIVE-IN WINDOW AND RUNS ACROSS THIS BACK FENCE AND GETS IN HIS CAR THAT HE HAS LEFT BACK THERE TO CARRY OUT HIS PLAN.

PLANNING, ARRANGING. GETS AWAY. AND THAT OFFICER GOES INSIDE AND HE SEES LITERALLY A BLOOD BATH. HE SEES SHIRLEY IN THE BACK FACE DOWN, BLOOD EVERYWHERE. MONEY ALL OVER THE FLOOR. AND HE CALLS FOR BACKUP BECAUSE HE'S SEEN SOMEONE IN THERE AND HE DOESN'T WANT TO GO IN WITH WHAT HE JUST SAW. HE'S ASKING FOR BACKUP. MORE OFFICERS COME. THE DEFENDANT IS ON HIS WAY WITH MONEY HE CARRIED OUT. NOT VERY MUCH. AND YOU WILL HEAR WHAT HE TOOK SHIRLEY SHEALY'S LIFE FOR.

THEY CALL IN SOME S.L.E.D. FOLKS TO PROCESS THE PLACE. THEY CALL IN THE BLOODHOUNDS AND THE BLOODHOUNDS PICK UP A TRAIL BACK OVER HERE OVER THE FENCE AND IT GOES BACK OUT TO A STREET BACK OVER HERE WHERE HE HAD HIS CAR [1250] PARKED TO MAKE HIS GETAWAY THAT HE HAD LEFT THERE.

SHIRLEY IS BUTCHERED. YOU WILL HERE THE PATHOLOGIST TALK ABOUT THE STAB WOUNDS, THE CUTS. IT'S MONEY ALL UNDER SHIRLEY. IT'S MONEY ALL OVER THE FLOOR. IT'S BLOOD EVERYWHERE. IT'S FOOTPRINTS. HIS. THEY PROCESS THE SCENE AND THEY CHECK AROUND.

THEY START TALKING WITH PEOPLE AND TRY TO FIND OUT WHO IN THE WORLD COULD HAVE DONE THIS TO SHIRLEY SHEALY. WHO COULD HAVE BUTCHERED HER LIKE THAT. AND THEY FIND OUT HE WAS AROUND THE STORE THAT DAY. HE'S MISSING. THEY DON'T FIND HIM FRIDAY NIGHT. THEY DON'T FIND HIM SATURDAY. THEY DON'T FIND HIM SUNDAY. AND THEN MONDAY AFTERNOON, THEY FIND OUT THAT HE IS MANY STATES AWAY IN LOWELL, MASSACHUSETTS, WHERE HIS SISTER LIVES. HE TAKES OFF FROM BATESBURG-LEESVILLE AND HE STARTS HIS RUNNING. HE'S ON THE RUN. I-20, 95, NORTH CAROLINA, VIRGINIA, RIGHT ON UP, PHILADELPHIA, NEW YORK, NEW JERSEY, LOWELL, MASSACHUSETTS.

THE CHIEF OF THE BATESBURG POLICE DEPARTMENT, CHIEF OSWALD, WHO IS SITTING RIGHT BACK THERE ON OUR BENCH, HE FINDS OUT FROM A RELATIVE WHO CALLS HIM. HE CALLS THE LOWELL MASSACHUSETTS POLICE DEPARTMENT AND WE HAVE SOME FINE OFFICERS HERE FROM LOWELL MASSACHUSETTS. THEY GO TO THAT RESIDENCE. WILLIAM A. KELLY IS THERE. THEY ASK HIM CAN THEY TALK WITH HIM. SURE. SAYS WE WANT TO TALK TO YOU [1251] ABOUT SOMETHING THAT HAPPENED IN BATESBURG, SOUTH CAROLINA. THOSE OFFICERS NEVER HEARD OF BATESBURG, SOUTH CAROLINA. THEY DON'T KNOW WHAT HAPPENED. THEY JUST GOT A CALL FROM THE CHIEF AND THEY WANT TO FIND OUT ABOUT SOMETHING AT A KENTUCKY FRIED CHICKEN PLACE. THEY ASK HIM AT FIRST, DO YOU KNOW ANYTHING ABOUT IT.

NO, NOT ME. I DON'T KNOW A THING. AND THEY SAID, WELL, THERE'S SOMETHING DOWN THERE HAPPENED TO A WOMAN, WE WANT TO KNOW IF YOU KNOW ANYTHING ABOUT IT BECAUSE THEY WOULD LIKE TO TALK WITH YOU.

THEY ADVISE HIM OF HIS LEGAL RIGHTS. YOU HAVE HEARD OF THE *MIRANDA* RIGHTS. THEY ADVISE HIM. THEY GIVE HIM THAT COURTESY. HE SAYS I KNOW MY RIGHTS AND, WELL, YEAH, I DID IT. AND THEY SAID, WILL YOU COME DOWN TO THE STATION WITH US AND PUT IT IN WRITING. SURE. THEY ADVISE HIM AGAIN OF HIS LEGAL RIGHTS.

IN WRITING, HE SAYS THEY ADVISED ME OF MY LEGAL RIGHTS. THEY TOLD ME I HAVE THE RIGHT TO A LAWYER AND I CAN BE QUIET AND NOT SAY ANYTHING. WHATEVER I SAY CAN BE USED AGAINST ME AND WHOLE LOT OF OTHER RIGHTS. HE GIVES UP THOSE RIGHTS. WAIVES THEM. HE TELLS THEM A STORY. SOME TRUTH, SOME LIES. HE'S STILL LYING, BUT HE ADMITS KILLING SHIRLEY. HE EVEN DESCRIBES THE KNIFE THAT HE USED. AND HE SAID I MUST HAVE LEFT IT THERE AND HE DID BECAUSE THE KNIFE WAS FOUND THERE AT THE PLACE HE LEFT THERE. HE EVEN TOLD THEM WHAT WAS WRITTEN ON THE HANDLE OF THAT KNIFE AND [1252] DESCRIBED IT TO THEM. HE EVEN TOLD THEM ABOUT TAPING UP SHIRLEY AND HE SAID I KEPT STABBING HER EVEN WHILE SHE WAS GASPING FOR BREATH. HE WAS TALKING ABOUT TYING HER HANDS BEHIND HER. AND HE TELLS SOME TRUTH IN THERE. HE TELLS SOME LIES IN THERE. HE SAYS, YES, SIR, I JUMPED OUT THAT

DRIVE-IN WINDOW, RAN AWAY. AND THEY SAID, WELL, CAN YOU PUT ALL OF THAT DOWN HERE AND SIGN YOUR NAME ON IT AND HE DOES AND YOU WILL SEE, WRITTEN OUT SEVERAL PAGES, SOME TRUTH, SOME LIES. AND YOU WILL HEAR THE EVIDENCE. YOU DECIDE WHAT THE TRUTH IS. THAT'S YOUR JOB.

AND THEN THEY TAKE SOME OF HIS CLOTHING AND YOU KNOW WHAT HE'S GOT IN HIS FRONT POCKET IN LOWELL, MASSACHUSETTS, STILL ON MONDAY. HE'S GOT 90 DOLLARS, FIFTY ONE'S AND TWO TWENTY'S. IT'S BLOODSTAINED. AND YOU KNOW WHOSE BLOOD IS STILL ON THAT MONEY IN HIS POCKET IN LOWELL, MASSACHUSETTS, ON MONDAY. SHIRLEY SHEALY'S. THERE'S A WHITE T-SHIRT HE'S GOT IN LOWELL, MASSACHUSETTS. YOU KNOW WHOSE BLOOD IS ON THAT WHITE T-SHIRT OF HIS? SHIRLEY SHEALY'S. HE'S GOT A PAIR OF BLACK PANTS AND YOU KNOW WHOSE BLOOD IS ON THOSE BLACK PANTS. SHIRLEY SHEALY'S. HE'S GOT A PAIR OF BLACK AND BROWN BOOTS. GUESS WHOSE BLOOD IS ON THOSE BLACK AND BROWN BOOTS. YOU'LL HEAR THEM TESTIFY TO IT.

HE'S GOT 90 DOLLARS WITH HIM UP THERE. HE HAD SPENT SOME ON THE WAY TO BUY NEW CLOTHES, TO BUY NEW SHOES.

[1253] SHIRLEY'S TAKEN FOR AN AUTOPSY. SHE WAS LYING FACE DOWN; AND IN THE BLOOD, CAKED TO HER CLOTHES IS 102 DOLLARS THAT SHE

HAD FALLEN ON, 102 DOLLARS. THAT'S WHAT HE DID. THAT'S WHAT WILLIAM KELLY DID.

POSSESSION OF A WEAPON IN THE COMMISSION OF A VIOLENT CRIME, YES, SIR, YES, MA'AM. THAT KNIFE. KIDNAPPING, YES, SIR. HE DEPRIVED HER OF HER FREEDOM, HE CONFINED HER, HE SEIZED HER WITHOUT ANY TYPE OF AUTHORITY OF THE LAW.

ARMED ROBBERY, CERTAINLY. HE'S STILL GOT THE BLOOD MONEY ON HIM. SAVES MONEY THAT'S BEEN TAKEN OUT.

AND MURDER, THE MOST HEINOUS CRIME KNOWN TO MANKIND. YES, SIR. HE BUTCHERED HER LIKE AN ANIMAL WHAT FOR –

MR. KIRKLAND: OBJECTION, YOUR HONOR. I THINK HE'S GETTING –

THE SOLICITOR: – FOR LUST –

MR. KIRKLAND: – INTO ARGUMENT.

THE COURT: JUST ONE MOMENT.

I'M SORRY, I DIDN'T UNDERSTAND YOU.

MR. KIRKLAND: I THINK HE'S GETTING INTO ARGUMENT. HE'S GONE BEYOND OPENING STATEMENTS.

THE COURT: ALL RIGHT.

SOLICITOR, IF YOU WOULD PLEASE MAKE AN OPENING STATEMENT.

[1254] THE SOLICITOR: YES, FOR WHAT – FOR WHAT HE VALUES MORE THAN COMMON

DECENCY, FOR WHAT HE VALUES MORE THAN THE FEELINGS OF OTHERS, FOR WHAT HE VALUES MORE THAN HUMAN LIFE, THE LUST FOR MONEY.

[1374] **TIMOTHY CROWLEY – DIRECT BY MR. CHASE**

* * *

A LOWELL, MASSACHUSETTS POLICE DEPARTMENT STATEMENT REPORT. JANUARY 8, 1996, AT 5:40 P.M. TELEPHONE NUMBER 803-657-5523.

QUESTION: WAS A *MIRANDA* CARD READ AND

SIGNED: YES.

MY NAME IS: KELLY, WILLIAM ARTHUR.

ADDRESS: 93 THORNTON ROAD, BATESBURG, SOUTH CAROLINA.

FATHER'S NAME: MICHAEL THOMAS KELLY.

[1375] MOTHER'S MAIDEN NAME: JULIA L. KELLY. MARRIED: NO.

DATE OF BIRTH 5-26-78.

SOCIAL SECURITY NUMBER: 248-53-9902. OCCUPATION: COOK.

AT: MCDONALD'S AIKEN, SOUTH CAROLINA.

I AM MAKING A VOLUNTARY STATEMENT TO OFFICERS SERGEANT BRENDAN DURKIN AND INSPECTOR TIM CROWLEY.

QUESTION: WHAT IS THE HIGHEST SCHOOL GRADE YOU ATTENDED?

ANSWER: NINTH.

QUESTION: ARE YOU PRESENTLY UNDER DOCTOR'S CARE?

ANSWER: NO.

QUESTION: ARE YOU TAKING ANY MEDICATION?

ANSWER: NO.

HAVE YOU BEEN DRINKING ALCOHOLIC BEVERAGES?

ANSWER: NO.

HAVE YOU RECENTLY USED ANY FORM OF CONTROLLED SUBSTANCES?

ANSWER IS NO.

SUMMARY: THE STATEMENT THAT I AM ABOUT TO GIVE WILL BE GIVEN OF MY OWN FREE WILL. NO ONE HAS THREATENED ME OR PROMISED ME ANYTHING TO GIVE THIS STATEMENT. I HAVE BEEN ADVISED OF MY RIGHTS BY SERGEANT DURKIN, WHO READ THE RIGHTS OUT LOUD TO ME FROM AN ORANGE CARD. I UNDERSTOOD [1376] THE RIGHTS THAT WERE READ TO ME. I SIGNED THE CARD WHICH I KNOW MEANS THAT I UNDERSTAND MY RIGHTS. AFTER I SIGNED THE CARD, THE POLICE ASKED ME IF I WAS WILLING TO TALK TO THEM ABOUT THE REASON THAT I DROVE FROM SOUTH CAROLINA TO MASSACHUSETTS. MY SISTER LIVES

IN LOWELL AND I HAD PLANNED TO DRIVE UP HERE TO VISIT HER, BUT I HAD A PROBLEM IN SOUTH CAROLINA THAT MADE ME DECIDE TO COME EARLIER THAN I HAD PLANNED.

LAST FRIDAY NIGHT, JANUARY 5, 1996, JUST AFTER 10:00 P.M., I STABBED SHIRLEY SHEALY INSIDE THE KENTUCKY FRIED CHICKEN RESTAURANT AND TOOK SOME OF THE RESTAURANT'S MONEY. AFTER DOING THIS, I WAS SCARED AND DIDN'T KNOW WHAT TO DO. I KNEW THAT I HAD TO GET OUT OF SOUTH CAROLINA BECAUSE I KNEW THAT THE POLICE WOULD BE LOOKING FOR ME. I DECIDED TO COME TO LOWELL, MASSACHUSETTS, AND WHILE I WAS DRIVING UP HERE, THINK OVER WHAT I HAD DONE AND WHAT I SHOULD DO.

I INTENDED TO GO BACK TO SOUTH CAROLINA AFTER AWHILE, BUT NOT RIGHT AWAY.

TONIGHT, WHEN THE DETECTIVES CAME TO MY SISTER'S HOUSE, I HAD A GOOD IDEA WHY THEY WERE THERE, BUT I DIDN'T KNOW WHAT TO SAY AND DIDN'T WANT TO GET MY SISTER ELIZABETH INVOLVED IN ANYTHING THAT SHE DIDN'T KNOW ANYTHING ABOUT. WHEN THE POLICE CAME INTO THE HOUSE, THEY TOOK ME INTO A ROOM SO THAT WE COULD TALK PRIVATELY. I WAS GLAD THAT THEY HAD DONE THIS – CORRECTION. I WAS GLAD [1377] THAT THEY HAD DONE THAT BECAUSE I DIDN'T WANT MY SISTER TO KNOW WHAT WE WOULD BE TALKING ABOUT.

THEY READ THE RIGHTS CARD TO ME AND I SIGNED IT BECAUSE I UNDERSTOOD THE RIGHTS.

AT FIRST, THE POLICE TOLD ME THAT THEY KNEW ABOUT THE PROBLEM THAT I HAD HAD AT HOME IN SOUTH CAROLINA AND I LIED AND I TOLD THEM THAT I DIDN'T HAVE A PROBLEM. I LIED BECAUSE I WAS AFRAID FOR MY SISTER AND DIDN'T WANT TO SAY TOO MUCH.

THEN I REALIZED THAT THE POLICE ALREADY KNEW WHAT I HAD DONE AND I JUST WANTED TO GET IT OVER WITH. THE POLICE TOLD ME THAT I COULD TELL MY SIDE OF THE STORY AND THEY WOULD TYPE IT DOWN AND LET ME READ IT TO MAKE SURE WHAT IT SAYS IS WHAT I SAID.

I LIVE IN BATESBURG, SOUTH CAROLINA, WITH MY MOM AND MY DAD. I WORK AT MCDONALD'S – AT A MCDONALD'S RESTAURANT IN AIKEN, SOUTH CAROLINA, WHICH IS OFF U.S. ONE. I HAVE WORKED THERE FOR FOUR TO SIX MONTHS. BEFORE I WORKED AT MCDONALD'S, I WORKED AT KENTUCKY FRIED CHICKEN AND AT BURGER KING.

WHEN I WENT TO WORK AT KENTUCKY FRIED CHICKEN, SHIRLEY SHEALY WAS THE MANAGER. SHE WAS A FRIEND OF MY SISTER. SHIRLEY SEEMS LIKE SHE IS ABOUT 25 TO 27-YEARS OLD. SHE IS MARRIED TO A GUY NAMED NEAL SHEALY. NEAL DOESN'T LIKE ME THOUGH. HE ACCUSED ME OF SLEEPING WITH SHIRLEY. I NEVER GOT INTO AN ARGUMENT WITH HIM THOUGH. I [1378] USED TO JUST IGNORE HIM. HE WOULD EITHER SAY SOMETHING TO ME OR SAY IT TO SHIRLEY.

I WORKED AT K.F.C. MORE THAN EIGHT TO TEN MONTHS AND QUIT BECAUSE OF SHIRLEY. WHILE I

WORKED THERE, SHIRLEY WAS ALWAYS ASKING ME TO STAY WITH HER, SAYING THINGS LIKE SHE WANTED ME TO SLEEP WITH HER AND SHE WOULD COME UP TO ME AND FONDLE ME – MY WHOLE BODY SAYING THAT SHE WANTED TO HAVE SEX WITH ME. SHE ACTUALLY WOULD GRAB ME BY THE BALLS AND SAY THAT SHE WANTED ME BECAUSE – CORRECTION. GRAB ME BY THE BALLS AND SAY THAT SHE WANTED ME, BUT BECAUSE SHE WAS UGLY AND UNATTRACTIVE AND SEEMED DIRTY AND SMELLED, I WAS NEVER INTERESTED. I WOULD ALWAYS TELL HER TO LEAVE ME ALONE. SHIRLEY WOULD GET MAD AT ME BECAUSE I WOULDN'T SLEEP WITH HER AND BECAUSE OF THIS, SHE WOULD MAKE ME DO JOBS THAT ORDINARILY I WOULDN'T HAVE TO DO LIKE CLEAN THE LOBBY AND OTHER THINGS. EVERY ONCE IN A WHILE, I WOULD PLAY ALONG WITH HER AND ACT LIKE I WAS INTERESTED AND THEN TURN AWAY JUST TO MAKE HER MAD.

BECAUSE I WAS SICK OF DEALING WITH HER, I QUIT THE JOB. AFTER I QUIT, SHIRLEY CALLED ME A FEW TIMES AND ASKED ME HOW I WAS DOING. SHE WOULD STILL COME ON TO ME SEXUALLY. AT NO TIME DID I EVER HAVE PHYSICAL CONTACT WITH HER.

I HAVE NOT WORKED AT KENTUCKY FRIED CHICKEN FOR THREE OR FOUR MONTHS, BUT WHILE I WAS THERE, I DID KNOW [1379] THAT SHIRLEY WAS PREGNANT. HER HUSBAND HAD ACCUSED ME OF BEING THE FATHER, BUT LIKE I SAID, I'VE NEVER HAD SEX WITH HER.

I'VE BEEN ASKED TO DESCRIBE IN MY OWN WORDS WHAT HAPPENED INSIDE THE KENTUCKY FRIED CHICKEN LAST FRIDAY NIGHT AND I AGREED TO DO THIS.

LAST THURSDAY NIGHT, JANUARY 4, '96, I WAS AT HOME AND GOT A PHONE CALL FROM PATISHA DOZIER WHO I WORKED WITH AT K.F.C. SHE ASKED ME TO COME BY AND SEE HER BECAUSE I DIDN'T – I HADN'T BEEN THERE SINCE I QUIT K.F.C. I TOLD PATISHA THAT I WOULD STOP BY THE NEXT DAY.

ON FRIDAY, JANUARY 5TH, '96, AT AROUND 4:00 P.M., I STOPPED BY K.F.C. I WENT INSIDE AND VISITED WITH THE GIRLS WHO WORKED THERE, SHIRLEY, MARY ANN, BARBARA AND MARY. PATISHA WAS LATE SO I WAITED AROUND FOR HER TO SHOW UP. WHILE I WAS WAITING, SHIRLEY ASKED ME FOR A RIDE TO THE BANK. I DROVE HER TO HER BANK, NEWBERRY FEDERAL SO THAT SHE COULD MAKE A PERSONAL DEPOSIT, $400 IN THE DRIVE-THRU WINDOW INTO THE NATIONSBANK TO MAKE THE K.F.C. DEPOSIT. WE WENT TO THE NATIONSBANK WITH THE K.F.C. DEPOSIT FIRST.

WE RETURNED TO K.F.C. AND HUNG AROUND INSIDE WITH THE GIRLS UNTIL ABOUT 6:00 TO 7:00 P.M. I THEN WENT HOME AND STAYED THERE UNTIL 9:00, 9:30 P.M. I TOOK A SHOWER AND GOT DRESSED AND PLANNED TO GO TO THE ZOO, WHICH IS A TEEN [1380] CLUB IN COLUMBIA, SOUTH CAROLINA. I LEFT THE HOUSE DRIVING MY FOUR-DOOR MERCURY LYNX, COLOR GRAYISH SILVER,

BUT WHEN I LEFT, I DECIDED TO TAKE A DETOUR AND STOP BY K.F.C. TO SAY HEY, TO THE GIRLS.

WHEN I GOT BACK TO K.F.C., IT WAS AFTER 10:00 P.M., WHICH IS CLOSING TIME. I COULD SEE THAT THE LIGHTS WERE OUT LIKE THEY WERE CLOSED. I COULD SEE SHIRLEY'S CAR PARKED OUTSIDE IN THE FRONT OF THE LOT TO THE LEFT SIDE OF THE BUILDING FACING U.S. ~~ONE~~. I KNEW IT WAS HER CAR BECAUSE IT WAS RED-BROWN BURGUNDY COLORED FOUR-DOOR BIG CAR. THE CAR WAS RUNNING AND THE DRIVER'S DOOR WAS OPEN. I COULD SEE WHEN I PULLED UP THERE WAS NO ONE INSIDE THE CAR. I PARKED NEAR THE ENTRANCE AND GOT OUT OF THE CAR AND COULD SEE INTO THE RESTAURANT, BUT I COULDN'T SEE ANYONE INSIDE. THE DOOR NEAR WHERE SHIRLEY'S CAR WAS PARKED WAS OPEN. I OPENED THE DOOR AND WENT INSIDE. I WENT INTO THE EMPLOYEE DOOR AND SAW SHIRLEY IN THE OFFICE. I SAID HEY, SHIRLEY, AND SHE TURNED TOWARD ME. SHE WAS IN THE ROOM THAT THEY CALL THE OFFICE WHERE THE SAFE WAS. I SAW THAT THE SAFE WAS OPEN. SHE LOOKED LIKE SHE WAS GETTING READY TO LEAVE.

I ASKED SHIRLEY IF EVERYONE ELSE HAD LEFT AND SHE SAID YES, THAT MARY ANN HAD JUST LEFT A FEW MINUTES AGO. I SAID SEE YOU LATER, BUT THEN SHIRLEY ASKED ME TO STAY THERE AND TALK TO HER FOR AWHILE. SHIRLEY STARTED COMING ON TO [1381] ME LIKE I DESCRIBED BEFORE. SHE ASKED ME TO STAY AND HAVE SEX WITH HER AND TOLD ME THAT SINCE SHE WAS PREGNANT

ALREADY, IF WE HAD SEX, I COULDN'T GET HER PREGNANT. I DIDN'T WANT TO DO IT BECAUSE I DIDN'T LIKE HER AND WANTED TO LEAVE AND GO TO THE ZOO.

I STARTED TO LEAVE, BUT SHIRLEY GRABBED ME AND ASKED ME NOT TO LEAVE AGAIN. I PUSHED HER AWAY AND TOLD HER NOT TO PUT HER HANDS ON ME AND TOLD HER TO SIT IN THE CHAIR AND I WOULD STAY AND TALK WITH HER IF SHE DIDN'T TOUCH ME. SHIRLEY SAT IN THE CHAIR AND I SAW SOME WIDE DUCT TAPE, SILVER GRAY, THAT WAS ON THE FLOOR NEXT TO A FILE CABINET. I PICKED UP THE TAPE AND TOLD HER TO PUT HER HANDS BEHIND HER BACK. SHIRLEY LET ME DO THIS. I TAPED HER HANDS BEHIND HER BACK AS SHE SAT ON THE CHAIR. I SAID, THIS WAY YOU WON'T BE TOUCHING ME. I TOLD HER THAT IF SHE DIDN'T LET ME DO THIS, I WOULDN'T STAY AND LET HER TALK TO ME.

I LEFT HER TIED UP IN THE CHAIR ABOUT FIVE OR TEN MINUTES WHILE SHE WAS TELLING ME HOW MUCH SHE WANTED ME AND HOW MUCH SHE WANTED TO BE WITH ME. SHE TOLD ME THAT I MADE HER LIFE SPARKLE. I TOLD HER THAT I DIDN'T LIKE HER BECAUSE SHE WAS NASTY AND SHE GOT MAD AND STARTED TO POUT.

WHILE ALL THIS WAS GOING ON, I HAD A KNIFE ON ME THAT HAD A YELLOW HANDLE AND SAID "SEA STYLE" ON THE HANDLE THAT WAS LIKE A DIVING KNIFE. IT HAD A CUTTING BLADE ON [1382] ONE SIDE AND A JAGGED EDGE ON THE ONE SIDE. I

HAD BEEN CARRYING THIS KNIFE OFF AND ON FOR PROTECTION DURING THE PAST TWO WEEKS AFTER A BLACK GUY, WHO DIDN'T LIKE ME, THREATENED TO SHOOT ME. THE KNIFE WAS IN MY RIGHT PANTS POCKET WITH A PIECE OF PAPER WRAPPED AROUND THE BLADE. I WAS GOING TO LEAVE BECAUSE SHIRLEY HAD PISSED ME OFF. I WAS GOING TO LEAVE HER TIED UP LIKE THAT JUST TO MAKE HER MAD.

AS I TURNED TO LEAVE, SHIRLEY GOT UP AND FREED ONE HAND AND GRABBED ME AND I TOLD – AND TOLD ME TO COME BACK. I SAID, GET THE HELL AWAY FROM ME YOU SICK BITCH. I ALSO SAID OTHER THINGS LIKE CALLING HER A BITCH AND A SLUT.

I KEPT WALKING AND SHE KEPT TRYING TO PULL ME BACK INTO THE OFFICE AND STARTED HITTING ME ASKING ME NOT TO LEAVE. BOTH HER HANDS WERE FREE NOW, BUT ONE OF THEM, THE LEFT STILL HAD TAPE ON IT. I TOOK THE KNIFE OUT OF MY PANTS, TOOK THE PAPER OFF THE BLADE AND TURNED TO MY RIGHT AND SLIT HER THROAT. EVEN AFTER I CUT HER, SHE KEPT GRABBING AT ME SO I KEPT STABBING HER WHEREVER I COULD UNTIL SHE LET GO OF ME. I COULDN'T STOP MYSELF. I KEPT DRAGGING HER AS SHE HUNG ONTO ME AND KEPT STABBING HER UNTIL WE REACHED THE EMPLOYEES DOOR. SHIRLEY THEN LET GO AND FELL TO THE FLOOR. SHE WAS GASPING FOR AIR. I DON'T REMEMBER WHAT I DID WITH THE KNIFE. IT'S PROBABLY STILL THERE. I DIDN'T HAVE IT ON ME WHEN I LEFT K.F.C. WHILE [1383]

SHE WAS GASPING FOR AIR, LIKE I DESCRIBED, I WANTED TO KEEP HER FROM GETTING UP, SO I TAPED HER HANDS BEHIND HER BACK AGAIN. ALL THE TIME I WAS TAPING HER HANDS, SHE WAS GASPING FOR AIR. I STABBED HER AS MANY TIMES AS I HAD TO. I DON'T KNOW HOW MANY TIMES, BUT IT SEEMED LIKE IT WAS MORE THAN TWENTY TIMES.

ONCE SHIRLEY WAS TAKEN CARE OF AND PREVENTED FROM GETTING UP, I WAS CONFUSED AND GOING IN CIRCLES BECAUSE I KNEW THAT IF THE POLICE GOT THERE, I WOULD HAVE A CHANCE TO TELL MY STORY LIKE I AM NOW. THEY WOULD PROBABLY JUST SEE SHIRLEY THERE ALL TIED UP AND STABBED TWENTY TIMES AND GET ALL EXCITED AND TAKE ME UP.

I THEN WENT BACK TO THE SAFE BECAUSE I KNEW THAT I NEEDED – THAT I'D NEED MONEY TO GET AWAY AND TOOK THE MONEY THAT I COULD SEE. AS I WAS LEAVING, I DROPPED SOME OF THE MONEY THAT I TOOK ONTO THE FLOOR.

I THEN RINSED MY HANDS OFF IN THE SINK BECAUSE THERE WAS BLOOD ON THEM AND I THINK I LEFT THE KNIFE THERE, TOO. BECAUSE THERE WAS SO MUCH BLOOD ON THE FLOOR, I COULDN'T GET OUT THE DOOR. I CLIMBED OUT OF THE DRIVE-THRU WINDOW AND WENT TO MY CAR WITH THE MONEY UNDER MY COAT. I LEFT THE LOT AND HEADED TOWARD LEXINGTON, SOUTH CAROLINA.

IT WAS DURING THIS RIDE THAT I DECIDED TO LEAVE SOUTH CAROLINA AND HEAD TO MASSACHUSETTS TO VISIT MY SISTER.

[1384] AT AROUND MIDNIGHT, I LEFT LEXINGTON AND HEADED NORTH. I WAS STILL WEARING THE CLOTHES THAT I WAS WEARING WHEN I STABBED SHIRLEY. I WAS WEARING BLACK JEANS, BROWN AND BLACK BOOTS, BLACK SUEDE LEATHER JACKET WITH A CAMEL CIGARETTE LOGO, WHITE T-SHIRT AND PLAID YELLOW-BROWN BOXER TYPE UNDERWEAR.

ON THE WAY NORTH, I STOPPED AND BOUGHT CLOTHES WITH THE MONEY THAT I STOLE, BUT THE CLOTHES THAT I WAS WEARING WHEN I STABBED SHIRLEY IS STILL IN THE CAR INSIDE A PLASTIC BAG, COLOR YELLOW.

ON THE WAY NORTH, I SPENT ABOUT FOUR-HUNDRED DOLLARS ON CLOTHES, GAS, FOOD AND THINGS THAT I NEEDED, INCLUDING A WATCH AND SNEAKERS. I SLEPT IN THE CAR AND DROVE HERE AND ARRIVED IN LOWELL AT ABOUT 3:00 A.M. I SLEPT IN MY CAR IN A REST AREA AND GOT TO MY SISTER'S HOUSE ABOUT THIRTY MINUTES BEFORE THE POLICE CAME THERE.

FROM THE TIME ALL OF THIS HAPPENED, I HAVE NOT TOLD ANYONE WHAT I DID. MY SISTER AND NIECE JUST THINK I CAME FOR A SURPRISE VISIT. I NOW HAVE $141.55 LEFT. I HAD ABOUT FORTY DOLLARS ON ME WHEN I WENT INTO THE K.F.C. EVERYTHING ELSE THAT WAS IN MY POCKETS

WHEN THE POLICE TOOK ME WITH THEM WAS FROM K.F.C.

SERGEANT DURKIN HAD READ THE TYPED STATEMENT, WHICH I GAVE OUT LOUD TO ME WITH INSPECTOR CROWLEY IN THE ROOM AS I FOLLOWED ALONG. WHAT HE READ AND I READ IS WHAT [1385] I SAID AND IS THE TRUTH.

[1443] **STEVEN M. DERRICK – DIRECT BY MR. HUMPHRIES**

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Q WHAT I WANT TO DO, AGENT DERRICK, IS TO GO BACK TO THAT FIRST AREA OF CONFLICT. BASED ON YOUR EXAMINATION AND [1444] IN YOUR EXPERT OPINION, CAN YOU TELL THIS JURY HOW MANY BLOWS, AT THE VERY LEAST, WAS STRUCK IN THAT AREA AND WHERE THEY MIGHT HAVE OCCURRED RELATING TO WHETHER THE VICTIM WAS SEATED IN THE CHAIR OR NOT?

A OKAY. IN EXAMINATION OF THE BLOODSTAINS IN THIS PARTICULAR AREA, THERE HAD TO BE AT A MINIMUM OF FOUR BLOWS.

FIRST OFF, THERE HAD TO BE A STAB OR A BLOW TO CREATE A WOUND TO CAUSE THE BLOOD TO COME TO THE SURFACE. WITHOUT BLOOD BEING ON THE SURFACE, THESE SPATTER IMPACTS THAT I LOOK FOR WOULD NOT BE PRESENT. SO THERE IS

AT LEAST ONE WOUND TO CREATE THE BLOODLETTING.

ONCE BLOODLETTING HAS OCCURRED, ADDITIONAL IMPACT INTO THE AREA WHERE THE BLOOD IS PRESENT WILL CREATE TEAR DROPS OF BLOOD THAT ARE PROJECTED OUT AS THE FORCE IS APPLIED TO IT.

IN EXAMINING THE CHAIR, THERE WERE TWO AREAS OF IMPACT SPATTER. ONE BEING ON THE FRONT SIDE OF THE BACK TOP OF THIS BACK RAIL, THE SIDE THAT A PERSON WOULD BE SITTING ON. THESE IMPACT SPATTERS HAD PROJECTED OUT.

WHEN STUDYING THESE SPATTER PATTERNS, AS THEY GO OUT IN VARIOUS LOCATIONS, THEY POINT BACK TO THE AREA THAT THEY COME FROM. WHEN THERE IS A CONSIDERABLE NUMBER OF THESE IMPACT SPATTERS THAT ARE PRESENT AND STUDYING THEM AND ORIENTING THEM BACK TO THE DIRECTION THEY CAME FROM, [1445] WHEN THESE TEAR DROP SPATTERS CROSS, IT'S REFERRED TO AS A POINT OF CONVERGENCE. USING ALL OF THESE, WHERE THEY MEET AND CROSS, IS THE APPROXIMATE GENERAL AREA OF WHERE THIS SOURCE OF BLOOD CAME FROM WHEN FORCE WAS APPLIED TO IT.

THERE WAS ONE OF THOSE AREAS THAT WAS ON THE FRONT SIDE UPPER RAIL OF THE BACK OF THIS CHAIR. ON THE OTHER SIDE OF THE CHAIR, THERE WAS A CONSIDERABLE NUMBER OF THESE

SPATTERS WHICH CAME UP TO A POINT OF CONVERGENCE JUST ABOVE THE TOP RAIL OF THE CHAIR. THIS BEING ON THE BACK SIDE.

ON THE FLOOR AND ALSO IN OTHER AREAS OF THE CHAIR, THERE WAS A CONSIDERABLE NUMBER OF CRISSCROSSING SPATTERS. THEY ALL CONVERGE PRIMARILY IN THE AREA RIGHT NEXT TO THE CHAIR WHERE THERE WAS A POOL OF BLOOD. BECAUSE THERE WERE SO MANY THAT WERE CROSSING SO CLOSE TOGETHER, I CANNOT SPECIFICALLY ACCOUNT FOR A NUMBER OF BLOWS IN THAT PARTICULAR AREA, BUT I CAN SAY THAT THERE IS AT LEAST A MINIMUM OF ONE AND PROBABLY MORE IN THAT PARTICULAR AREA.

Q IS IT YOUR TESTIMONY THEN THAT THE VICTIM WOULD HAVE HAD TO BEEN SEATED IN THAT CHAIR FOR AT LEAST ONE BLOW?

A BASED ON THE EVIDENCE I SAW, THAT WOULD BE CORRECT.

Q OKAY. NOW, LET'S GO TO THE FINAL AREA OF ASSAULT OR CONFLICT, IF YOU WILL, AND TELL THE JURY WHERE IS THE MAJOR BLOODLETTING OCCURRING?

A IN THIS AREA OVER HERE AROUND THE DOORWAY AND INTO [1446] THE BATHROOMS THERE IS A NUMBER OF IMPACT SPATTERS THAT HAVE POINTS OF CONVERGENCE.

STARTING OUT HERE ON THIS WALL, THERE ARE SOME IMPACT SPATTERS THAT ARE PRESENT THAT HAS POINT OF CONVERGENCE ON THIS WALL

HERE. WHICH MEANS THAT THE SOURCE OF THE BLOODLETTING IS VERY CLOSE TO THE WALL AND OUT FRONT. ASSOCIATED WITH THE SPATTERS IN THIS AREA HERE ARE SOME SWIPE MARKS OR TRANSFER MARKS AND, WHAT I MEAN BY THAT IS, IF I HAVE BLOOD ON MY CLOTHING OR ON MY SKIN AND I BRUSH AGAINST THIS WOOD, THEN THE BLOOD THAT'S ON MY CLOTHING OR ON MY SKIN THAT IS STILL WET WILL TRANSFER FROM THIS CLOTHING TO THAT PARTICULAR SURFACE.

IF I AM MOVING WHILE I MAKE CONTACT WITH IT, IT WILL GIVE KIND OF A SWIPING OR MOVEMENT MARK. ASSOCIATE WITH THE SPATTER WAS THE SWIPING PATTERN ON THIS WALL AND I'M NOT VERY GOOD WITH THE LASER POINTER AND RIGHT HERE IN THIS LITTLE CORNER AREA OF THE WALL.

MOVING FROM THERE TOWARD THE DOOR, I PICKED UP APPROXIMATELY THREE AREAS, THREE DIFFERENT SOURCES OF THIS IMPACT SPATTER THAT'S HIGH UP ON THIS SIDE OF THE DOOR TO INDICATE THREE AREAS OF CONTACT.

NOW, ASSOCIATED WITH THIS IS SOME BLOODSTAINS THAT ARE BACK ON THIS WALL OVER HERE. THOSE ARE REFERRED TO AS CAST-OFF STAINS. IN SIMPLE EXPLANATION OF THIS, IF I WAS TO TAKE A KNIFE AND TO STAB MYSELF IN THE HAND, AS I [1447] WITHDRAW THE KNIFE, BLOOD WILL COME FROM MY HAND ONTO THE BLADE OF THE KNIFE. AS I PUT THE KNIFE IN MOTION, THIS LOOSE BLOOD THAT IS ON THE KNIFE OR COULD POSSIBLY BE ON MY HAND BEGINS TO COME OFF BECAUSE THE

MOTION IS APPLIED TO THE OBJECT THAT IT'S ON. SO THE BLOOD WILL COME OFF IN THIS DIRECTION. IT COULD COME OFF STRAIGHT UP. AND WHEN I COME TO A SUDDEN STOP, THIS LOOSE BLOOD WILL FLY OFF DIRECTIONALLY POINTING BACK TO THE AREA FROM WHICH IT CAME FROM.

THE DIFFERENCE BETWEEN THIS TYPE OF BLOODSTAIN AND THAT OF THE IMPACT SPATTER ARE THAT THESE STAINS ARE LARGER BECAUSE THERE'S NOT ENOUGH FORCE APPLIED TO THEM THEY STAY VIRTUALLY IN A STRAIGHT LINE. EVEN THOUGH THEY CAN BE SCATTERED OUT, THEY ARE ALL POINTING BACK IN THE SAME DIRECTION. THEY DON'T HAVE A POINT OF CONVERGENCE AS I SPOKE OF EARLIER WITH THE IMPACT SPATTER.

SO ASSOCIATED WITH THE STAINS ON THE DOOR, THERE ARE AT LEAST TWO CAST-OFF PATTERNS REPRESENTED ON THIS WALL.

I ALSO NOTED ON THIS DOOR FOR THE FIRST TIME IS BLOODSTAINS THAT WERE TOWARD THE BASE OF THE DOOR THAT ARE ASSOCIATED WITH AN ARTERY BEING CUT AND THUS SPURTING BLOOD. THESE TYPE STAINS ARE REFERRED TO AS ARTERIAL SPURTS; AND WHAT IT IS, IS WHEN AN ARTERY IS OPENED, AS THE HEART PUMPS THE BLOOD BECAUSE THERE IS AN OPENING IN THAT [1448] ARTERY, THE BLOOD IS PUMPED OUT. THERE ARE LARGE DROPS OF BLOOD AND YOU USUALLY HAVE LITTLE STREAMS BEHIND THEM THAT MAKE THEM UNIQUE AND SPECIFIC TO THEMSELVES. THOSE WERE FIRST OBSERVED AT THE BASE OF THIS

DOOR AND OVER HERE ON THIS DOORFRAME ALSO.

ALONG WITH THOSE PARTICULAR SPURTS, AGAIN, THERE WAS A SWIPE OR A TRANSFER THAT WENT THROUGH THESE STAINS AND THE STREAK MARKS WERE READILY VISIBLE.

THERE WAS ANOTHER AREA WITH POINTS OF CONVERGENCE OF IMPACT SPATTER OVER HERE ON THIS WALL NEXT TO THE FIRE EXTINGUISHER.

BASED ON THE NUMBER OF SPATTERS OF CRISS-CROSSING PATTERNS THERE, AGAIN IT'S LIKE THIS POOL OF BLOOD WHERE THE CHAIR IS, I CAN SAY THAT THERE IS AT LEAST A MINIMUM OF ONE IMPACT OUT FROM THAT WALL AND PROBABLY MORE.

Q NOW, LET ME ASK YOU THIS, REGARDING THE LOCATION - THE FINAL LOCATION OF THE VICTIM'S BODY, WHICH YOU HAVE INDICATED IS HERE, YOU HAVE ALSO TESTIFIED THAT THERE WAS BLOOD EVIDENCE OR BLOOD SPATTER EVIDENCE IN THIS AREA (INDICATES)?

A YES, SIR.

Q WOULD THE VICTIM HAVE HAD TO REACH THIS AREA AT LEAST AT SOME POINT IN TIME DURING THE BLOODLETTING?

A YES, SIR -

Q AND -

[1449] A - IT WOULD HAVE HAD TO BEEN IN THE HALLWAY -

Q - AND DO YOU HAVE, BASED ON YOUR EXPERT OPINION, DO YOU KNOW HOW OR WHY THE VICTIM ENDED UP IN THIS POSITION? WAS THERE ANY EVIDENCE RELATED TO THE BLOOD THAT WOULD INDICATE TO YOU HOW SHE ARRIVED AT HER FINAL POSITION HERE?

A OKAY. ALONG WITH THE SPATTER, WHICH I SPOKE OF ON THE WALL, ON THE FLOOR BETWEEN THIS LITTLE DRAIN PLUG AND THE DOOR WAY, THERE WAS A CONSIDERABLE POOL OF BLOOD. THIS POOL OF BLOOD WAS LARGE IN AREA. SO THEREFORE THE LITTLE DROPS THAT I'D BE LOOKING FOR ON THE FLOOR ARE OBVIOUSLY COVERED BY THIS POOL OF BLOOD. BUT FROM THIS POOL OF BLOOD BACK TO THE VICTIM'S LOCATION, THERE ARE STREAK MARKS IN THIS BLOOD, STARTING ROUGHLY RIGHT IN HERE (INDICATES). YOU'VE GOT A LARGE POOL OF BLOOD AND THEN YOU HAVE THE STREAKING MARKS THAT COME FROM THIS HALLWAY AREA BACK TO THE FINAL LOCATION OF THE VICTIM.

Q IN LAYMAN'S TERMS, SHE WAS DRUG TO THAT POSITION?

A IT WOULD BE CONSISTENT WITH THE VICTIM HAVING BEEN DRUG FROM THIS AREA TO THIS AREA (INDICATES).

[1560] **DR. JOEL S. SEXTON – DIRECT**
BY MR. HUMPHRIES

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MR. HUMPHRIES: DOCTOR, WHAT I'M GOING TO ASK YOU TO DO IS TO TALK ABOUT YOUR RELEVANT FINDINGS RELATED TO THE AUTOPSY AND YOU TELL ME, SHOULD WE START FRONT, TOP OR BACK?

THE WITNESS: FRONT.

Q REFERRING TO STATE'S 62.

I'M GOING TO HAND YOU A LASER POINTER. PERHAPS, THAT WILL BE OF SOME ASSISTANCE TO YOU.

A AS YOU CAN SEE, THIS IS A DIAGRAM SHOWING THE FRONT OF THE BODY AND THE BACK OF THE BODY. THE AREAS IN ORANGE ARE SHARP INCISED OR STAB WOUNDS. NOTICE HERE ON THE FRONT OF THE BODY, ON THE RIGHT SIDE, THERE ARE FOUR THAT ARE SITUATED HERE, DOWN THE RIGHT SIDE OF THE CHEST (INDICATES).

NOW, THE LIVER COMES UP INSIDE THIS AREA. SO THREE OF THESE ACTUALLY – I'M SORRY, TWO OF THESE IN THIS AREA AND THIS ONE WENT INTO THE LIVER, WHEREAS THIS ONE WENT INTO THE ABDOMINAL CAVITY AND THIS ONE UP HERE ON THE RIGHT CHEST A LITTLE HIGHER WENT INTO THE RIGHT LUNG. SO THERE WERE TWO STAB WOUNDS OF THE RIGHT LUNG FROM THE FRONT. I'M SORRY, ONE STAB WOUND FROM THE RIGHT

LUNG FROM THE FRONT, THREE IN THE LIVER AND ONE IN THE ABDOMINAL CAVITY.

[1561] IF YOU NOTICE HIGH ON THE NECK AND I'LL SHOW YOU A BLOWUP OF THAT IN A MOMENT, THERE ARE SOME INCISED WOUNDS. AND THE DIFFERENCE BETWEEN INCISED AND STABBED, STAB IS WHEN THE POINT OF THE BLADE ENTERS THE BODY AND PRODUCES A WOUND THAT'S DEEPER THAN IT IS LONG ON THE SURFACE OF THE BODY.

AN INCISED WOUND IS WHERE THE SHARP EDGE IS DRAWN ACROSS THE SURFACE OF THE BODY, PRODUCES A VERY LONG WOUND THAT MAY BE SHALLOW.

SO THERE WERE FIVE STAB WOUNDS HERE ON THE FRONT OF THE RIGHT CHEST.

LOOKING AT THE BACK OF THE BODY, THERE'S A CHOPPING TYPE OF WOUND IN MY OPINION, ALTHOUGH, IT COULD ALSO BE AN INCISED WOUND HERE ON THE BACK OF THE HEAD THAT'S THREE INCHES LONG. IT HAS A ONE-INCH CUT IN THE BONE AND THAT'S WHY I FEEL LIKE IT'S CHOPPING. THAT ONE-INCH CUT IS IN THE CENTER OF THE WOUND AND IT'S MORE CONSISTENT WITH THE KNIFE BLADE HITTING IT LIKE AN AX SO AS TO CAUSE THIS LINEAR HOLE IN THE BONE. WHEREAS AN INCISED WOUND, YOU WOULD NOT NORMALLY EXPECT TO DO THAT, BUT IT COULD DEPENDING ON THE FORCE INVOLVED AND THE SHARPNESS OF THE BLADE.

THERE WERE THREE STAB WOUNDS HERE ON THE BACK OF THE NECK AND THEN IN THIS AREA, INCLUDING THE TOP OF THE LEFT SHOULDER, THE BACK OF THE LEFT ARM, THERE ARE TWENTY [1562] STAB WOUNDS, THE MAJORITY OF WHICH ARE GOING DOWNWARD. TWO OF THEM GO UP AND ALL OF THEM GO TOWARDS THE FRONT. THERE ARE TWO ON THE LOWER BACK, ONE HERE IN THE MIDLINE AND ONE ON THE RIGHT BUTTOCKS.

SO THERE ARE A TOTAL, INCLUDING THIS ONE ON THE BACK OF THE HEAD, OF THIRTY-ONE STAB OR INCISE WOUNDS NOT INCLUDING THE THREE THAT ARE HERE ON THE NECK THAT SHOW UP BETTER ON THE –

Q I SHOW YOU STATE'S –

A – BLOWUP OF THE NECK –

Q – STATE'S 63.

A SIXTY-THREE SHOWS JUST THE HEAD AREA FROM FOUR DIRECTIONS.

HERE ON THE FRONT OF THE NECK, YOU CAN SEE THERE'S A V-SHAPED INCISE WOUND. THIS IS CONSISTENT WITH THE KNIFE STARTING AT ONE POINT AND GOING ACROSS THE NECK AND THEN A SECOND CUT STARTING MOST PROBABLY HERE TO THE LEFT AND COMING ACROSS, BUT IT COULD ALSO BE FROM THE CENTER OF THIS AND GOING OUT. AND THERE WAS NO DEFINING PORTION OF THE INCISED WOUND TO TELL ME WHICH DIRECTION.

SOMETIMES A KNIFE, IF IT'S DULL ENOUGH WILL CAUSE A LITTLE WAVE OR A LITTLE PROJECTION OF SKIN WHERE IT CUTS AND THEN SLIPS AND YOU HAVE A LITTLE PROJECTION STICKING OUT WHICH TELLS YOU WHICH WAY THE KNIFE IS GOING. BUT IN THIS CASE, THIS WAS A NICE CLEAN CUT IN BOTH DIRECTIONS. [1563] SO IT COULD BE TWO IN THE SAME DIRECTION, IT COULD BE ONE IN EACH OF TWO DIRECTIONS.

ON THE RIGHT SIDE OF THE NECK IS AN ADDITIONAL INCISED WOUND. THIS ONE ON THE RIGHT SIDE IS VERY SHALLOW. THE TWO IN THE FRONT, ONE IS SHALLOW, THE ONE THAT COMES OFF AT AN ANGLE HERE. THE OTHER ONE IS DEEP ENOUGH TO COMPLETELY CUT THROUGH THE AIRWAY, WHICH IS YOUR TRACHEA AND TO CUT THROUGH THE SUPERFICIAL VESSELS IN THIS CASE THE JUGULAR VEINS IN THE NECK ON THE LEFT SIDE.

THE SIDE VIEW SIMPLY SHOWS THE SAME WOUNDS BUT SHOWS THEM FROM THE SIDE SO THAT YOU CAN GET AN APPRECIATION OF THE DIRECTION AND THIS – THIS SHOWS IN THIS CASE A NUMBER OF STAB WOUNDS HERE ON THE BACK, MOSTLY ON HER RIGHT SIDE, A FEW ON HER LEFT SIDE OF THE BACK. THESE ON THE UPPER NECK ARE ON THE LEFT SIDE AND THEN THERE ARE THESE WOUNDS ON THE RIGHT SIDE OF THE CHEST AND THE ONE THAT'S NEAR THE MIDLINE THAT'S ILLUSTRATED HERE WITH A YELLOW TYPE OF DRAWING TO INDICATE THAT IT'S ON THE OTHER SIDE OF THE BREAST AND DOES GO DOWNWARD INTO THE CHEST.

SOME OF THE ONES I'VE ILLUSTRATED AND WERE SHOWN HERE SHOWING THE DIRECTION WITH THE YELLOW LINES AND RED DOTTED LINES TO INDICATE THE DIRECTION THEY WENT INTO THE BODY. IT WAS DIFFICULT TO DO THAT ON THESE IN THE BACK BECAUSE THERE WERE SO MANY RIGHT THERE TOGETHER, BUT A FEW I HAVE SHOWN THE DIRECTION.

[1564] Q LET ME ASK YOU IN RELATION TO THE DIRECTION OF THE WOUNDS, DOCTOR, WHAT DOES THE CHANGING OF THE DIRECTION IN THE WOUNDS INDICATE TO YOU REGARDING MOVEMENT EITHER BY THE VICTIM, THE ASSAILANT, OR BOTH?

A IF WE FIND MULTIPLE STAB WOUNDS, THEY ARE ALL GOING EXACTLY THE SAME PARALLEL DIRECTION, IT GIVES THE IMPRESSION THAT THE PERSON, NEITHER PARTY MOVED DURING THE TIME THOSE STAB WOUNDS OCCURRED. THAT EITHER THE INDIVIDUAL WAS INCAPACITATED OR IN SOME WAY RESTRAINED AND THE PERSON DOING THE STAB DID NOT MOVE, BUT STABBED REPEATEDLY IN THE SAME AREA. THAT WAS NOT TRUE IN THIS CASE. ALMOST ALL OF THESE WENT IN DIFFERENT DIRECTIONS, EITHER LEFT OR RIGHT.

AS I MENTIONED, THE ONES ON THE BACK, ALMOST ALL OF THEM WENT DOWNWARD EXCEPT FOR TWO, BUT SOME WOULD GO TO THE RIGHT, SOME TO THE LEFT, SOME STRAIGHT IN. SO MOST ALL OF THEM WENT IN ROUGHLY DIFFERENT DIRECTIONS WITH THE EXCEPTIONS TO THE ONES

ON THE RIGHT SIDE, ALL OF WHICH WENT FROM RIGHT TO LEFT, BUT EVEN IN THAT CASE, THOSE ON THE RIGHT SIDE DID GO – ONE OF THEM GOES DOWNWARD HERE IN THE FRONT OF THE CHEST. THE OTHER TWO GO SOME – ONE TO THE BACK, ONE TOWARDS THE FRONT. SO THERE WAS INDICATION THAT THERE WAS PROBABLE MOVEMENT BETWEEN THE TWO PARTIES EITHER BY THE PERSON DOING THE STABBING OR THE PERSON RECEIVING THE STAB WOUNDS OR BOTH.

[1565] Q DOCTOR, LET ME ASK YOU THIS ABOUT THE CONDITION OF MS. SHEALY'S BODY UPON RECEIPT BY YOU, WAS THE BODY CLOTHED?

A AT THE TIME WE RECEIVED THE BODY, THE BODY – IF MY MEMORY – LET ME CHECK MY PHOTOGRAPHS. I KNOW SOME OF THE CLOTHING HAD BEEN – NO, THE BODY WAS CLOTHED AND IT WAS JUST AS IT WAS FOUND. THERE WAS NO EFFORT TO TRY TO EXAMINE THE PERSON AT THE SCENE OR TO RESUSCITATE. SO SHE WAS CLOTHED.

Q LET ME ASK YOU THIS. WAS THERE ANY FOREIGN, ANY FOREIGN ITEMS ATTACHED TO THE CLOTHING OF THE VICTIM UPON YOUR RECEIPT OF THE VICTIM?

A FOREIGN ITEMS ATTACHED –

Q ON THE FRONT –

A – TO THE CLOTHING OF THE VICTIM. WE LOOKED FOR TRACE EVIDENCE. LET ME CHECK MY EVIDENCE TRANSFER. I DON'T SPECIFICALLY

RECALL WHAT WE FOUND, BUT GIVE ME JUST A MOMENT AND I'LL CHECK THAT.

Q WELL, LET ME ASK IT THIS WAY. DID YOU RECEIVE OR TAKE FROM THE BODY OF SHIRLEY SHEALY AND LATER TRANSFER TO STEVE CLARE OF BATESBURG-LEESVILLE POLICE DEPARTMENT A SUM OF MONEY WHICH WAS ATTACHED TO THE BODY OF SHIRLEY SHEALY?

A YES, WE DID. THE PHOTOGRAPHS DO SHOW THAT THERE WERE DOLLAR BILLS STUCK TO THE FRONT OF THE BODY BECAUSE THERE WAS A GREAT DEAL OF BLOOD ON THE FRONT OF THE BODY.

[1566] IN FACT, NORMALLY A PERSON STABBED ONCE OR TWICE, WE'LL FIND ABOUT A QUART AND A HALF OF BLOOD INTERNALLY BECAUSE IT TAKES THAT MUCH TO BLEED TO DEATH, BUT IN THIS CASE BECAUSE OF THE MULTIPLE WOUNDS, ALL OF THAT HAD BLED OUT EXCEPT FOR ABOUT 50 CC'S, WHICH IS ABOUT A FOURTH OF A CUP OF BLOOD. AND WE DID FIND A NUMBER OF DOLLAR BILLS, THREE TWENTY'S, EIGHT FIVE'S AND TWO ONE'S THAT WERE STUCK TO THE FRONT OF THE BODY.

Q DOCTOR, REGARDING THE CONDITIONAL [sic] OF MS. SHEALY'S ARMS AND HANDS AT THE TIME OF THE AUTOPSY, DO YOU RECALL WHAT CONDITION SHE WAS IN WHEN YOU RECEIVED HER?

A WHEN WE RECEIVED HER, HER ARMS AND HANDS WERE BEHIND HER BACK AND WERE HELD

IN PLACE BY GRAY DUCT TAPE. THE DUCT TAPE WAS AROUND HER WRISTS.

Q DID YOU, IN FACT, REMOVE THAT DUCT TAPE OR AT YOUR DIRECTION, WAS IT REMOVED?

A RIGHT. WE REMOVED THE DUCT TAPE.

Q AND THAT WAS LATER PROVIDED TO AN AGENT FROM S.L.E.D., WHO WAS THERE WHO LATER TRANSPORTED IT AWAY FROM THE SCENE?

A THAT'S RIGHT, JOHN –

Q FROM THE AUTOPSY?

A – JOHN BLACK FROM S.L.E.D. PICKED UP THAT EVIDENCE.

Q YES, SIR.

DID YOU HAVE AN OPPORTUNITY TO OBSERVE HER HANDS; [1567] THAT IS – WELL, LET ME ASK YOU THIS. GENERALLY THE CONDITION OF THE BODY, WAS THE BETTER PORTION OF THE BODY BLOOD SOAKED OR NOT BLOOD SOAKED?

A THERE WAS MORE BLOOD ON THE BODY – MOST OF THE BODY DID HAVE BLOOD ON IT. PRIMARILY ON THE FRONT OF THE BODY, BUT THERE WAS SOME ON THE BACK.

Q LET ME ASK YOU THIS, REGARDING THE HANDS, DID THERE APPEAR TO BE EVIDENCE OF BLOOD, AT LEAST, TO THE HUMAN EYE ON THE HANDS?

A LET ME REFER TO MY PHOTOGRAPHS JUST ONE MOMENT.

Q YES, SIR.

A THE BLOOD IS PRIMARILY ON THE FRONT OF THE BODY AND THE UPPER PART OF THE BODY. THE HANDS APPEAR TO BE ROUGHLY FREE OF BLOOD. THERE MAY BE SOME TINY SPOTS, BUT THERE'S CERTAINLY NO BLOOD SMEARED ON THE HANDS.

Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 23, A PICTURE FROM THE SCENE. NOW, IS THAT PHOTOGRAPH, THE PICTURE AT THE SCENE CONSISTENT WITH THE PHOTOGRAPHS THAT YOU TOOK AT THE AUTOPSY REGARDING THE CONDITION OF THE HANDS?

A YES. IT LOOKS THE SAME AS FAR AS THE CONDITION OF THE HANDS. THERE'S NO BLOOD VISIBLE ON THIS PHOTOGRAPH OR ON MINE OF THE HANDS.

Q THANK YOU.

DOCTOR, TELL THE JURY THE DAMAGE CAUSED BY THESE WOUNDS; THAT IS, WHICH OF THESE WOUNDS COULD HAVE BEEN [1568] FATAL AND WHAT DAMAGE WAS DONE TO THE INTERNAL ORGANS OF MS. SHEALY AS A RESULT OF THE WOUNDS?

A THE FIVE WOUNDS IN THE FRONT OF THE CHEST, PARTICULARLY THIS ONE THAT WENT INTO THE LUNG, AS WELL AS THESE THREE THAT WENT INTO THE LIVER, RECOGNIZING YOUR LIVER IS RIGHT UNDER YOUR DIAPHRAGM AND SO A STAB WOUND THAT GOES INTO YOUR CHEST THROUGH THE DIAPHRAGM AND INTO THE LIVER, THEN

BLEEDS INTO THE LUNG CAVITY AS OPPOSED TO THE ABDOMINAL CAVITY BECAUSE THE STAB WOUNDS DIDN'T GO ALL THE WAY THROUGH THE LIVER. THEY JUST OPENED UP A HOLE IN THE TOP OF IT SO IT COULD BLEED INTO THE LUNG CAVITY.

SO THESE FIVE WOUNDS, THIS ONE IN THE CHEST, HIGH IN THE MIDLINE TO THE RIGHT AND THESE FOUR ALL CAUSED BLEEDING INTO THE RIGHT CHEST.

FIVE OF THESE STAB WOUNDS IN THE BACK CAUSED SIX STAB WOUNDS IN THE BACK OF THE RIGHT LUNG AND THAT'S BECAUSE ONE OF THESE WOUNDS, THIS LARGE ONE, THE KNIFE WENT IN, CAME OUT PART WAY, AND THEN WENT IN AGAIN; THEREFORE, CAUSING A LARGER HOLE EXTERNALLY AND THEN TWO STAB HOLES INTERNALLY IN THE LUNG.

SO THERE WERE A TOTAL OF SEVEN STAB HOLES IN THE RIGHT LUNG. FIVE FROM THE – I'M SORRY, SIX FROM THE REAR, ONE FROM THE FRONT AND THREE IN THE LIVER, ALL OF WHICH CONTRIBUTED TO BLEEDING INTO THE RIGHT LUNG CAVITY.

OUR LUNG IS LIKE A BUBBLE THAT YOU MIGHT BLOW [1569] WITH BUBBLE GUM IN YOUR MOUTH. IF YOU SUCK THAT BUBBLE GUM IN, YOU PRODUCE A BUBBLE THAT'S IN A CAVITY. IF YOUR LUNG OR THE BUBBLE COLLAPSES, THEN YOU HAVE AN EMPTY CAVITY THAT CAN FILL UP WITH BLOOD. SO YOU CAN BLEED TO DEATH INTERNALLY WITHOUT EVEN SEEING BLOOD EXTERNALLY FROM A STAB

WOUND THAT DOESN'T HAPPEN TO BLEED A LOT EXTERNALLY.

IN ADDITION TO THESE STAB WOUNDS OF THE CHEST THAT CAUSED HEMORRHAGE INTO THE RIGHT CHEST CAVITY, THE CUT IN THE NECK, PARTICULARLY THIS ONE ON THE FRONT THAT WENT THROUGH THE AIRWAY AND WENT THROUGH THE JUGULAR VEIN, CONTRIBUTED TO DEATH. WE DID NOT SEE AIR EMBOLIZATION IN THE HEART, WHICH IS ONE WAY TO DIE FROM A CUT IN THE NECK BECAUSE THE AIR GETS IN THERE AND IT'S NO LONGER ABLE TO PUMP BLOOD BECAUSE THERE'S AN AIR LOCK IN THE SYSTEM, BUT THERE WAS BLEEDING FROM THIS AREA.

SO HER DEATH, IN MY OPINION WITHIN REASONABLE MEDICAL CERTAINTY, WAS FROM THE BLEEDING, BOTH FROM THE NECK AND INTO THE RIGHT CHEST CAVITY, FROM THE MULTIPLE STAB WOUNDS OF THE RIGHT SIDE OF THE CHEST AND THE BACK, AS WELL AS THE CUT IN THE NECK.

Q DOCTOR, I'VE REALLY GOT ONE OTHER AREA I WANT TO ADDRESS WITH YOU.

TYPICALLY, WHEN THERE IS AN ASSAULT, PARTICULARLY WITH A KNIFE AND A VICTIM'S OR THE ONE WHO IS RECEIVING THE ASSAULT, THEIR HANDS ARE UNBOUND, WOULD YOU MOST OFTEN SEE [1570] EVIDENCE OF DEFENSIVE WOUNDS OR NOT DEFENSIVE WOUNDS?

A MORE OFTEN THAN NOT, IT'S BEEN MY EXPERIENCE THAT THE PERSON IF THEY ARE ABLE

TO DEFEND THEMSELVES WILL HAVE WHAT WE REFER TO AS DEFENSIVE WOUNDS, WHICH ARE CUTS ON THE HANDS OR FOREARMS OR IF THEY ARE DOWN ON THEIR BACK, ON THEIR LEGS. ANYTHING THEY CAN PUT UP IN FRONT OF THE KNIFE TO KEEP IT FROM GETTING TO THEM. AND SO MOST OF THE TIME IN A PERSON THAT IS KILLED WITH A KNIFE, WE DO SEE DEFENSIVE WOUNDS.

Q AND IN THIS CASE, WAS THERE EVIDENCE OF DEFENSIVE WOUNDS?

A NO, THERE WAS NOT. THERE WERE NO CUTS ON THE FOREARMS OR THE HANDS.

[1594] **CLOSING ARGUMENTS BY THE SOLICITOR**

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WHAT THE DEFENSE IS DOING IN THIS CASE, LADIES AND GENTLEMEN, IS TRYING TO GET EACH AND EVERY ONE OF YOU TO GRASP A SOFT SIDE, TRY TO GRASP ON SOMETHING THAT JUST DOESN'T QUITE MAKE SENSE, JUST SOFTENS IT A LITTLE BIT WHERE EVEN MAYBE WE'RE DEALING WITH VOLUNTARY MANSLAUGHTER AND THAT'S IT; OR MAYBE WE'VE JUST GOT MURDER AND NO ARMED ROBBERY. MAYBE IF WE SOFTEN IT ENOUGH, THERE'S NO KIDNAPPING. HOW ARE THEY SOFTENING THIS, LADIES AND GENTLEMEN? TRYING TO FIT THE STORY OF WILLIAM ARTHUR KELLY WITH THE

CIRCUMSTANCES OF THAT DAY. HOW HAVE THEY DONE THAT?

THE BOTTOM LINE IS THE STATEMENT GIVEN BY WILLIAM ARTHUR KELLY, WHILE IT DOES CONCEDE CERTAIN FACTS WHERE HE KNEW HE WAS TO PUT IT QUITE BLUNTLY, BUSTED. HE WAS BUSTED IN LOWELL, MASSACHUSETTS, BUT THEN HE CHOSE, I SUBMIT TO YOU, TO LIE, TO LIE ABOUT SHIRLEY SHEALY, TO LIE ABOUT HOW HE KILLED HER, TO LIE ABOUT HOW SHE ACTED THAT DAY.

WE'RE GOING TO WALK THROUGH THOSE. MOST APPROPRIATELY PUT, THE LIES AND TIMES OF BILLY KELLY –

MR. KIRKLAND: OBJECTION, YOUR HONOR.

I THINK HE CAN COMMENT ON WHAT THE STATEMENT SAYS, BUT BY CHARACTERIZING, LABELING THAT, I THINK, IS IMPROPER.

THE COURT: I'LL SUSTAIN THE OBJECTION.

IF YOU WOULD, PLEASE, REFER TO THE STATEMENT IF [1595] THAT'S WHAT YOU ARE REFERRING TO.

MR. CHASE: YES, SIR, YOUR HONOR.

MR. KIRKLAND: YOUR HONOR – I'M SORRY, I DON'T MEAN TO INTERRUPT –

MR. CHASE: YOUR HONOR, I'LL TELL YOU WHAT. I'LL MARK THAT WORD OFF OF THERE –

THE COURT: ALL RIGHT, SIR.

MR. CHASE: – AND SUBMIT TO THIS JURY THAT THE EVIDENCE CERTAINLY SUPPORTS IT.

THE COURT: ALL RIGHT, SIR.

MR. CHASE: YOUR HONOR, FOR FUTURE REFERENCE, THESE ARE DIRECT QUOTATIONS FROM THAT STATEMENT WHICH IS ADMITTED INTO EVIDENCE AND THAT IS FOR THE JURY'S VIEW SO I CAN FOCUS ON THAT, SIR.

THE COURT: ALL RIGHT, SIR.

MR. CHASE: THANK YOU, YOUR HONOR.

IT BEGINS, LADIES AND GENTLEMEN, HE DOESN'T EVEN TELL YOU THE TRUTH ABOUT HOW LONG IT'S BEEN SINCE HE'S BEEN – HAD BEEN AT KENTUCKY FRIED CHICKEN. THAT SEEMS LIKE A SMALL POINT. THAT'S A SMALL POINT, BUT THAT'S THE WAY IT STARTED. IT'S BEEN A LONG TIME SINCE I WORKED THERE.

WHAT DOES THE DEFENSE WANT YOU TO BELIEVE IN THIS CASE? WHAT SOFTENS THE EVIDENCE? THERE WAS NO PLAN BY WILLIAM ARTHUR KELLY TO DO ANYTHING THAT DAY. THAT THERE WAS NO PLAN BY HIM TO GO TO THE KENTUCKY FRIED CHICKEN AND [1596] FORCE SHIRLEY SHEALY TO OPEN THAT SAFE TO GET MONEY, TO KILL HER AND TO RUN. IS THERE EVIDENCE OF THAT?

FIRST OF ALL, LET'S GO INTO THE FACT THAT – I'M SURE THE DEFENSE WANTS YOU TO BELIEVE THIS WAS A RANDOM MEETING. WE JUST HAPPENED TO HOOK UP. IT JUST PLAYED OUT THAT WAY.

THE FIRST THING WE DEAL WITH, LADIES AND GENTLEMEN, WILLIAM ARTHUR KELLY TALKS ABOUT HOW HE PULLS UP. WE KNOW THAT THIS RESTAURANT IS CLOSED. WE KNOW THAT IT'S PROBABLY AFTER TEN-THIRTY. YOU CAN LOOK AT THE STATEMENT OF MS. BARBARA ADAMS. SHE TALKS ABOUT LEAVING AT 10:24. THE LIGHTS ARE OUT. MAYBE A COUPLE OF LIGHTS INSIDE. THERE'S ONE CAR AT THAT RESTAURANT. I'M GOING BACK TO SEE THE GIRLS. WELL, THERE'S ONE WOMAN THERE AND IT'S THE WOMAN THAT HE HATES. THE WOMAN WHO SUPPOSEDLY HIT ON HIM ALL THE DAY; THE WOMAN WHO SUPPOSEDLY WANTED TO HAVE SEX WITH HIM. THIS 25-YEAR-OLD WOMAN WHO SUDDENLY WANTS BILLY KELLY. SO IT'S A RANDOM MEETING. WE ALSO KNOW IF IT'S NOT – IF IT'S A RANDOM MEETING, WHY DOES BILLY KELLY NOT PARK OUT FRONT. WHY DOES HE NOT JUST PARK RIGHT THERE (INDICATES), HERE (INDICATES), HERE (INDICATES), HERE (INDICATES). ANYWHERE IN THIS PARKING LOT IF HE'S JUST GOING IN TO SEE THE GIRLS. JUST GOING BACK TO VISIT THE GIRLS I USED TO WORK WITH AFTER HE SPENT FOUR HOURS WITH THEM THAT DAY. HOW DO WE KNOW THAT HE DIDN'T PARK THERE? [1597] WE KNOW FROM JASON HITE THAT THERE WAS ONE CAR IN THAT PARKING LOT. NOW, JASON HITE, THERE'S NO QUESTION ABOUT IT, ON DIRECT, HE SAID I DIDN'T SEE THE VICTIM. ON CROSS, HE GOT CONFUSED AND HE ADMITTED THAT WAS IN HIS STATEMENT. THAT'S SOMETHING YOU ARE JUST GOING TO HAVE TO GIVE WHATEVER WEIGHT YOU WON'T, BUT

YOU'VE GOT TO LOOK AT ALL OF THE CIRCUMSTANCES SURROUNDING IT TO SEE IF THAT MAKES ANY SENSE.

NOW, DID STEVE CLARE SEE ANOTHER CAR IN THAT PARKING LOT? NO, MA'AM, NO, SIR. NO ONE ELSE IS IN THAT PARKING LOT. WE ALSO KNOW THAT THE BLOODHOUNDS, AMAZINGLY ENOUGH, TRACK A TRAIL OVER THIS FENCE BACK TO HERE WHERE THERE ARE MARKS WHERE A CAR WOULD HAVE PULLED AWAY.

NOW, LADIES AND GENTLEMEN, IF WILLIAM KELLY IS PARKED THERE, CERTAINLY STEVE CLARE WOULD HAVE SEEN IT AND THERE WOULD HAVE BEEN NO NEED FOR HIM TO HOP OVER THAT FENCE. NOW, THEY MAY SAY, THAT COULD HAVE BEEN ANYONE HOPPING OVER THAT FENCE. THEY MAY SAY, WELL, THEY DIDN'T SEE ANY – THEY DIDN'T GET ANYTHING OVER HERE NEAR SHIRLEY SHEALY'S CAR WHERE IT WAS PARKED BEFORE. THERE WAS NO BLOODHOUND TRAIL OVER THERE.

WELL, FIRST OF ALL, IF SOMEONE ELSE IS LEAVING THE KENTUCKY FRIED CHICKEN FOR A NORMAL REASON – YOU REMEMBER AGENT JACKSON WHEN HE TESTIFIED – HE TALKED ABOUT HE WENT THIRTY FEET DOWN HERE AND WENT AROUND THE FENCE, [1598] THIS SIX-FOOT FENCE.

NOW, ALL I KNOW IS IF I'VE GOT A BUCKET OF CHICKEN FROM THE KENTUCKY FRIED CHICKEN, I'M NOT HOPPING A SIX-FOOT FENCE AND RUNNING THAT WAY WHEN I CAN JUST WALK AROUND. THERE'S ONLY ONE REASON A PERSON WOULD DO

THAT AND THAT'S BECAUSE THEY'RE RUNNING FROM THE LAW BECAUSE WILLIAM ARTHUR KELLY HAD JUST SLAIN, KILLED, SLIT THE THROAT OF SHIRLEY SHEALY.

NOW, WHAT ABOUT OVER HERE? THERE WEREN'T ANY TRACKS OVER HERE. WELL, AGENT JACKSON TOLD YOU WHEN HE STOOD UP THERE. THEY HAD TO START THEIR PERIMETER VERY WIDE BECAUSE THERE WAS CONTAMINATION WHEN THEY WERE SECURING THE SCENE. HE DIDN'T GET A HIT UNTIL RIGHT ON THE FENCE WHERE HE HAD GONE OVER.

IN OTHER WORDS, THE DOG DID EXACTLY WHAT HE WAS SUPPOSED TO DO. HE DIDN'T HIT ON ALL THE OTHER LAW ENFORCEMENT PERSONNEL'S TRACKS THAT WERE IN THAT PARKING LOT. HE HIT EXACTLY WHERE HE WAS SUPPOSED TO. WILLIAM ARTHUR KELLY WASN'T PARKED OUT FRONT. HE'S NOT PARKED NEAR THE ENTRANCE. YOU DECIDE WHETHER THAT'S THE TRUTH OR A LIE.

IT'S A RANDOM MEETING. THIS IS A REALLY INTERESTING POINT TO ME. WILLIAM ARTHUR KELLY SHOWS UP BETWEEN 10:30 AND 10:45 THAT DAY AND WHAT DOES HE DO. HE GOES IN. HE SEES THAT SHIRLEY SHEALY'S CAR IS OUT THERE. [1599] THE WOMAN HE HATES, THE WOMAN HE DOESN'T WANT TO BE AROUND, THE WOMAN HE QUIT K.F.C. FOR, AND WHAT DOES HE DO? HE GOES IN. WHAT IS THE FIRST THING, ACCORDING TO HIS STATEMENT, WHAT IS THE FIRST THING THAT HE DOES? DOES HE GO TO THE FRONT COUNTER HERE? HE

DOESN'T SEE HER. DOES HE GO TO THE FRONT COUNTER AND LOOK OVER AND SAY, HEY, SHIRLEY. NO. WILLIAM ARTHUR KELLY SAYS I GO IN HERE; I GO ALL THE WAY BACK HERE; I GO ALL THE WAY BACK IN HERE; I FOLLOW ALL THE WAY UP TO HERE TO SHIRLEY SHEALY.

NOW, HE SAYS, I CAME IN THIS DOOR AND SAID, HEY, SHIRLEY, AND SHE TURNED AROUND AND ACKNOWLEDGED ME. TAKE A LITTLE BIT CLOSER LOOK AT THAT STATEMENT. WHAT DOES HE SAY? I SAW THAT THE SAFE WAS OPEN.

LADIES AND GENTLEMEN, IF YOU ARE STANDING BACK HERE AND SHE TURNS AROUND AND THAT SAFE IS IN THAT ROOM, HOW IN THE WORLD DOES HE KNOW THAT THAT SAFE IS OPEN. WILLIAM ARTHUR KELLY IS RIGHT THERE WITH SHIRLEY SHEALY. WILLIAM ARTHUR KELLY IS FORCING HER TO OPEN THAT SAFE. WILLIAM ARTHUR KELLY HAS THAT KNIFE OUT ON HIM AT THAT POINT. HE'S GOT THE PERFECT VICTIM. HE'S GOT A PREGNANT LADY. IS SHE GOING TO DO WHAT HE SAYS? YES, MA'AM, YES, SIR. RANDOM MEETING. LADIES AND GENTLEMEN, IF THIS IS A RANDOM MEETING, WHY – WHY IN THE WORLD DOES WILLIAM ARTHUR KELLY BRING THIS KNIFE. WE ARE NOT TALKING ABOUT A POCKETKNIFE. [1600] THIS IS A DAGGER. IT ISN'T SOMETHING THAT YOU JUST KIND OF USE TO CLEAN YOUR FINGERNAILS. THIS IS SOMETHING YOU USE TO STAB. THERE'S NO QUESTION THAT'S HIS AND THERE'S NO QUESTION HE BROUGHT IT THERE THAT NIGHT. WELL, HE JUST HAS THAT FOR HIS PROTECTION. WELL, THAT MAKES SENSE. AND

WHY, LADIES AND GENTLEMEN, DOES WILLIAM ARTHUR KELLY BRING THESE GLOVES? IT'S A RANDOM MEETING. I JUST HAPPENED TO HAVE THESE. WILLIAM ARTHUR KELLY DECIDED TO DO A LITTLE SURGERY THAT NIGHT. SURGERY ON SHIRLEY SHEALY. IF WILLIAM ARTHUR KELLY HASN'T PLANNED THIS, WHY IS HE WORRIED ABOUT HIS PRINTS BEING ON THE SCENE? WHY IS HE WORRIED ABOUT IF HE TOUCHES SOMETHING, IT'S GOING TO LEAVE SOMETHING BEHIND? HOW DO YOU KNOW THAT THERE WAS A GLOVE ON HIS HANDS THAT NIGHT.

FIRST OF ALL, HE TALKS ABOUT IT IN HIS STATEMENT. I HANDLED THE DUCT TAPE. I TAPED HER UP. IN FACT, HE TALKS ABOUT USING IT, NOT ONLY AT THE CHAIR, BUT HE TALKS ABOUT IT LATER ON DOWN THE HALLWAY WHEN SHE'S GRASPING [sic] FOR AIR AND I WANTED TO PREVENT HER FROM DOING ANYTHING. WELL, IF HE HAS HANDLED THIS SO MUCH, WHY – WHY AREN'T THERE ANY PRINTS ON THIS? AGENT BLACK EVEN TOLD YOU, THAT'S WHAT ALL OF THIS IS. THAT'S PROCESSING. LOOKING FOR PRINTS. NO PRINTS. WILLIAM ARTHUR KELLY WAS WEARING THAT GLOVE.

LADIES AND GENTLEMEN, YOU HAD THAT LATEX TIP. IT WAS ACTUALLY ON – THIS EVIDENCE ON THAT CHAIR AT THE TEAR [1601] POINT. DID YOU HEAR STEVE DERRICK – AGENT DERRICK TALK ABOUT THAT? AT THE TEAR POINT. THAT MAKES SENSE, DOESN'T IT? IF YOU ARE TEARING THIS TAPE OFF, IF EVER IT'S GOING TO RIP, THAT'S GOING TO BE THE TIME. LEFT IT BEHIND. DIDN'T LEAVE A

FINGERPRINT. LUCKY FOR US, HE LEFT WHAT WAS COVERING UP HIS FINGERPRINTS.

LADIES AND GENTLEMEN, WHAT ELSE DID HE BRING TO THIS RANDOM MEETING WITH SHIRLEY SHEALY THAT THE DEFENSE WOULD LIKE FOR YOU TO IGNORE. THERE'S NO PLAN HERE. THE DUCT TAPE. THERE'S NO DUCT TAPE IN THAT STORE. WELL, I DON'T SEE HOW THIS IS SOMETHING, YOU KNOW, EVEN IF YOU BELIEVE THAT HE CARRIED THIS AROUND IN HIS POCKET FOR PROTECTION AND FOR SOME REASON HE'S GOT SOME FETISH FOR KEEPING GLOVES IN HIS POCKET AND WHERE ARE YOU KEEPING THIS IF YOU ARE GOING TO THE ZOO IN COLUMBIA, SOUTH CAROLINA. WHAT SENSE DOES THAT MAKE?

THE DEFENSE WANTS YOU TO IGNORE THAT. THEY WANT YOU TO BELIEVE IT WAS A RANDOM MEETING. DID HE HAVE ACCESS TO THOSE GLOVES? ABSOLUTELY. WHERE? MCDONALD'S. THE PLACE WHERE HE WORKED.

NOW, THEY ALSO WANT YOU TO IGNORE THE CONDITION OF THAT VEHICLE. SHIRLEY SHEALY'S CAR IS FOUND. THAT GAS CAN TIPPED OVER IN THE BACK. SECURE ON THE FLOORBOARD OF THAT IS A TIPPED OVER GAS CAN. NO ONE ELSE WAS IN THE BACK OF THE CAR THAT NIGHT. SHIRLEY SHEALY CERTAINLY WASN'T. [1602] SHE'S DRIVING THE CAR. THEY WANT YOU TO IGNORE THAT.

ANOTHER POINT IS THEY WANT YOU TO IGNORE THE FACT THAT HOW IN THE WORLD WOULD WILLIAM ARTHUR KELLY BE ABLE TO GET

MONEY FROM THE KENTUCKY FRIED CHICKEN. WHO WOULD HE NEED? COULD HE BREAK IN AND JUST GET IN THE SAFE? NO. WHAT WOULD HE NEED? WHO WOULD HE NEED? HE WOULD NEED THE CODE TO THE COMBINATION LOCK ON THAT FLOOR SAFE. WHO HAD THE CODE? SHIRLEY SHEALY. WHO IS THE PERFECT VICTIM? SHIRLEY SHEALY. WHAT ELSE DOES HE NEED? THE MANAGER. WHO IS THE MANAGER? SHIRLEY SHEALY. BUT IT'S JUST A RANDOM MEETING. SHE ALREADY HAD THE SAFE OPEN. GIVE THAT WHAT WEIGHT YOU THINK IT DESERVES.

HIS STORY IS THAT SHIRLEY WANTED ME. SHIRLEY SHEALY WANTED ME AND JUST AN AFTERTHOUGHT, THAT I TOOK THAT MONEY. SHIRLEY SHEALY, ACCORDING TO THE DEFENDANT, WANTED TO HAVE SEX WITH HIM. THIS IS A WOMAN SUPPOSEDLY WHO GOT OUT OF HER CAR, LEFT IT RUNNING. SHE WAS GOING HOME TO HER HUSBAND, A HUSBAND THAT IS APPARENTLY JEALOUS ACCORDING TO HIS STATEMENT, AND WHAT DOES SHE DO? SHE'S ALREADY CLOSED BECAUSE SHE KNOWS SHE NEEDS TO BE GETTING HOME. SHE SEES MR. KELLY WALK IN AND SHE DECIDES, WELL, I'M NOT GOING TO WORRY ABOUT MY HUSBAND; I'M NOT GOING TO WORRY ABOUT MY CAR RUNNING OUTSIDE. SUDDENLY, SHE WAS OVERCOME WITH PASSION FOR WILLIAM ARTHUR KELLY, A 17-YEAR-OLD BOY IN HIS HORMONAL PRIME, HAS A 25-YEAR-OLD WOMAN SUPPOSEDLY AFTER HIM IN THIS [1603] KENTUCKY FRIED CHICKEN. NO PLAN TO ROB.

IT ALSO TALKS ABOUT THE CIRCUMSTANCES OF THE CRIME. FIRST OF ALL, IT TALKS ABOUT SHE WANTED ME TO TAPE HER HANDS BEHIND ME [sic].

LADIES AND GENTLEMEN, SHIRLEY SHEALY WAS FOUND IN THE AUTOPSY, HER HANDS WERE DUCT-TAPED TOGETHER BEHIND HER. THE TESTIMONY – AND YOU REMEMBER IT HOW YOU WANT OR HOW YOU HEARD – WAS THAT HER HANDS WERE DUCT-TAPED TOGETHER. IT WASN'T DUCT-TAPED AROUND HER WAIST. IT WASN'T DUCT-TAPED ANYPLACE ELSE. WILLIAM ARTHUR KELLY SAYS, WELL, WHEN SHE'S SITTING THERE, SHE GETS UP AND SHE FREES ONE HAND. WELL, IF SHE FREES ONE HAND, SHE FREES BOTH. NOT ACCORDING TO WILLIAM ARTHUR KELLY. THAT DOESN'T MAKE ANY SENSE.

WHAT DO YOU HEAR FROM STEVE DERRICK? WILLIAM ARTHUR KELLY TELLS YOU THAT NOTHING HAPPENED IN THAT CHAIR. THAT SHE WAS DUCT-TAPED THERE, BUT SHE GOT FREE AND STARTED CHASING HIM. AGENT DERRICK TOLD YOU JUST THE OPPOSITE. AGENT DERRICK TOLD YOU THAT AT LEAST A MINIMUM OF TWO BLOWS TOOK PLACE IN THAT CHAIR. BLOOD SPATTER, SENT BLOOD ALL OVER THE PLACE.

LADIES AND GENTLEMEN, EVEN IF YOU IGNORE THIS DIAGRAM, YOU CAN LOOK AT THE BLOOD AROUND THIS CHAIR ON EITHER ONE OF THESE DIAGRAMS. BUT NOTHING HAPPENED THERE. THAT WAS THE POINT WHERE SHE WAS JUST GETTING UPSET AND [1604] STARTED REALLY WANTING ME.

EVEN AFTER I CUT HER, SHE KEPT GRABBING AT ME, SO I KEPT STABBING HER.

LADIES AND GENTLEMEN, AS WILLIAM ARTHUR KELLY DESCRIBED IT, HE SLIT HER THROAT AND HE CONTINUES TO STAB HER AS THEY RUN DOWN THROUGH HERE. HER APPARENTLY GOING AFTER HIM ACCORDING TO HIS STATEMENT. IS THAT WHAT THE EVIDENCE SHOWS? THE EVIDENCE FORENSICALLY. THE EVIDENCE THAT CAN'T LIE. THE EVIDENCE FORENSICALLY SHOWS SHE WAS CUT HERE AND SHE WAS CUT BRUTALLY IN BOTH PLACES.

NOW, HE WANTS TO SAY NOTHING EVEN HAPPENED OVER HERE. WELL, WE KNOW THE DUCT TAPE IS IN THERE AND HERE'S ANOTHER POINT.

I WANT YOU TO LOOK AT THIS WHEN IT GETS BACK INTO THE JURY ROOM. LOOK AT THAT NAME TAG. THAT WAS THE NAME TAG THAT AGENT DERRICK DESCRIBED TO YOU WAS SHIRLEY SHEALY'S. WELL, IF SHIRLEY SHEALY IS NOT IN ANY PERIL THERE, IF THERE IS NOTHING GOING WRONG THERE, WHY IN THE WORLD IS HER NAME TAG THERE. IT'S MORE EVIDENCE OF A STRUGGLE. THAT'S MORE EVIDENCE THAT SHE WAS FORCED TO DO THAT.

ANOTHER POINT IS THAT MR. KELLY WANTS YOU TO BELIEVE THAT BOTH OF HER HANDS WERE FREE. THE EVIDENCE JUST DOESN'T SUPPORT IT, LADIES AND GENTLEMEN. DR. SEXTON SAID ON THE STAND – HOW MANY TIMES HAS HE TESTIFIED? OVER SIX HUNDRED. HOW MANY AUTOPSIES HAS

HE DONE? OVER TEN THOUSAND. THERE'S NO BLOOD ON HER HANDS, LADIES AND [1605] GENTLEMEN. IF WE KNOW THAT SHE IS CUT HERE AT LEAST TWO TIMES RESULTING IN SPATTER ALL OVER THERE, RESULTING IN BLOOD ALL OVER THAT CHAIR, SHE'S GOING TO HAVE SOME BLOOD ON HER HANDS. NEVER ANY BLOOD ON HER HANDS. NOT EVEN AFTER SHE'S STABBED THIRTY-ONE TIMES, HER THROAT IS SLIT, SHE IS BASICALLY GIVEN A HATCHET WOUND IN THE BACK OF HER HEAD. NOT A DROP OF BLOOD.

NOW, YOU MAY HEAR HOW THE COAT WAS OVER HER HANDS. WELL, HER HANDS WOULD STILL HAVE TO BE BEHIND HER. THE ENTIRE TIME, NOT A DROP OF BLOOD. NO DEFENSIVE WOUNDS. I GUESS BECAUSE SHE WAS IN THE THRONGS OF PASSION THAT IT WAS OKAY FOR HIM TO STAB HER. HE JUST WANTED – SHE JUST WANTED TO GRAB HIM. SHE WASN'T WORRIED ABOUT THE FACT THAT THIS KNIFE IS DIVING IN HER BODY THIRTY-ONE TIMES.

COMMON SENSE. WHAT IS SHE GOING TO DO? SHE'S GOING TO BE COVERING UP. SHE'S GOING TO BE TRYING TO AVOID IT. SHE'S PREGNANT. DOES THAT MAKE SENSE? DOES THAT SOFTEN THIS CRIME?

ANOTHER POINT, THEY WANT YOU TO BELIEVE THERE MAY NOT HAVE BEEN AN ARMED ROBBERY HERE BECAUSE THERE WAS NO PLAN TO DO THAT.

IN THIS CASE, WILLIAM ARTHUR KELLY THOUGHT ABOUT IT AFTERWARDS TO GET THE

MONEY BECAUSE SHIRLEY SHEALY WAS JUST THERE GETTING THE MONEY OUT OF THE OPEN SAFE.

LADIES AND GENTLEMEN, THE MONEY IS UNDERNEATH [1606] SHIRLEY SHEALY. HOW DO YOU GO BACK TO A SAFE AND GET MONEY THAT'S NOT THERE? IT JUST DOESN'T MAKE SENSE. IT DOESN'T ADD UP. COMMON SENSE.

WILLIAM ARTHUR KELLY WANTS YOU TO BELIEVE THAT THE REASON THAT HE DID NOT GO OUT THE FRONT DOOR WAS BECAUSE THERE WAS TOO MUCH BLOOD. WHAT DID STEVE CLARE TELL YOU? HE SEES A PERSON DUCK DOWN. IS IT CONSISTENT AND WHOLLY CONSISTENT WITH HIS TESTIMONY THAT THAT PERSON WOULD HAVE FLED? HE TOLD YOU THAT HE DROVE IN AND DROVE AROUND. HOW MANY DIFFERENT PLACES DOES WILLIAM ARTHUR KELLY HAVE TO LEAVE THAT PLACE? THERE'S THE BACK DOOR. ONE BOLT. THERE WAS NO BLOOD BACK THERE. BECAUSE IF YOU GO OUT THE BACK DOOR, YOU ARE GOING EXACTLY WHERE STEVE CLARE WAS. THE FRONT DOOR. I'M NOT GOING OUT THE WAY I WENT IN. WELL, THAT MAKES A LOT OF SENSE.

LADIES AND GENTLEMEN, HE OBVIOUSLY DIDN'T HAVE A PROBLEM WALKING THROUGH THE BLOOD. HIS FOOTPRINTS ARE THROUGHOUT IT, BUT SUDDENLY HE'S OVERCOME WITH THAT AND DECIDES THAT I DON'T WANT TO WALK THROUGH THAT. AND EVEN IF HE DIDN'T WANT TO DO THAT, THIS IS A COUNTER. WHY NOT JUST HOP OVER THE COUNTER? NO, I'M GOING TO SQUEEZE THROUGH

THE DRIVE-THRU WINDOW WHICH IS ON THE OPPOSITE SIDE WHERE STEVE CLARE'S POLICE VEHICLE IS ON THIS SIDE AND RUN AND CONTINUE RUNNING UNTIL I GET TO LOWELL, MASSACHUSETTS, WHERE THE POLICE FIND HIM. RIGHT THERE. HE EVEN GOES SO [1607] FAR TO TELL YOU THAT HE WAS ADMITTING TO WHAT HE WAS WEARING AT THE CRIME SCENE.

WELL, LADIES AND GENTLEMEN, I DON'T KNOW IF YOU REMEMBER THE TESTIMONY ABOUT THE MISSING PERSON'S REPORT. THERE WAS ALSO A TAN SHIRT. YOU MAY HEAR ABOUT HOW THERE WASN'T ENOUGH BLOOD ON THIS SHIRT. THAT'S NOT IN THERE. WHERE IS THAT? PROBABLY THE SAME PLACE THOSE GLOVES ARE. ONE GLOVE WITHOUT THE TIP.

LADIES AND GENTLEMEN, THE SCENARIO IS SIMPLE. WILLIAM ARTHUR KELLY FORCED SHIRLEY SHEALY AT KNIFE POINT TO GO BACK INTO THAT KENTUCKY FRIED CHICKEN. WILLIAM ARTHUR KELLY FORCED SHIRLEY SHEALY, THE ONLY PERSON WHO COULD HAVE OPENED THAT SAFE AT THAT POINT, TO TAKE THE MONEY FROM THEM. WILLIAM ARTHUR KELLY DUCT TAPED SHIRLEY SHEALY WITH HER HANDS BEHIND HER BACK. WILLIAM ARTHUR KELLY PUT HER IN THAT CHAIR. WILLIAM ARTHUR KELLY STABBED HER EXECUTION STYLE. SHE WAS DEFENSELESS. WILLIAM ARTHUR KELLY TRIED TO TAPE HER TO THAT CHAIR. SHIRLEY SHEALY TRIED TO RUN FOR HER LIFE. SHIRLEY SHEALY RAN FIGHTING FOR HER LIFE TO GET OUT. WILLIAM ARTHUR KELLY WASN'T GOING TO LET IT

HAPPEN. WILLIAM ARTHUR KELLY AS SHE GASPS FOR AIR, WITH HER HANDS DUCT-TAPED BEHIND HER BACK, REPEATEDLY, BRUTALLY STABBED HER, CUT HER, SLIT HER THROAT, PUT A HATCHET-LIKE WOUND IN HER HEAD, CUT HER UP LIKE A PIECE OF MEAT AND LEFT HER THERE TO DIE. HE EVEN TRIED TO DRAG HER [1608] BACK INTO THE KITCHEN AREA TO HIDE HIS HANDY WORK.

WILLIAM ARTHUR KELLY, LADIES AND GENTLEMEN, WAS CAUGHT IN THE ACT. WILLIAM ARTHUR KELLY DID NOT HAVE TIME TO COLLECT ALL OF THE MONEY. WILLIAM ARTHUR KELLY FLED OUT OF THE DRIVE-THRU WINDOW TO ESCAPE STEVE CLARE CATCHING HIM. WILLIAM ARTHUR KELLY FLED ON FOOT OUT THE BACK TO WHERE HE HAD PARKED HIS CAR BEHIND THE KENTUCKY FRIED CHICKEN IN AN ADJACENT LOT. WILLIAM ARTHUR KELLY DISCARDED THE GLOVES THAT HE HAD AND THE SHIRT THAT HE HAD AND WENT UP TO LOWELL, MASSACHUSETTS, WHERE HE WAS APPREHENDED BY THE POLICE.

LADIES AND GENTLEMEN, THIS WAS DONE FOR ONE SIMPLE REASON. YOU HEARD SOLICITOR MYERS DISCUSS IT IN HIS OPENING STATEMENT. MONEY. WILLIAM ARTHUR KELLY PLACED ABOUT 140 DOLLARS OVER THE LIFE OF SHIRLEY SHEALY.

LADIES AND GENTLEMEN, HE TRIED TO RUN FROM THAT. LADIES AND GENTLEMEN, THE EVIDENCE WON'T LET HIM DO THAT. YOU ARE HERE IN A VERY – THE MOST IMPORTANT ROLE THAT ANYONE IN THIS COURTROOM HAS.

IT IS YOUR ROLE TO TAKE THE EVIDENCE AND TO LISTEN TO THE LAW AS IT'S CHARGED BY JUDGE CLARY AND IT IS YOUR JOB TO PUT THEM TOGETHER AND TO SPEAK THE TRUTH. DECIDE WHAT HAPPENED ON JANUARY THE 5TH, 6TH, 7TH, 8TH, 9TH, 10TH OF 1996. THAT IS YOUR ROLE. ONCE YOU DO THAT, YOU APPLY THE LAW.

YOU USED YOUR COMMON SENSE. AND I SUBMIT IT IS CLEAR THAT THE RUNNING WILL STOP. [1609] WILLIAM ARTHUR KELLY WILL BE HELD ACCOUNTABLE FOR THE ACTS THAT HE DID TO SHIRLEY SHEALY THAT DAY, THAT NIGHT IN ENDING HER LIFE OVER A LITTLE BIT OF MONEY.

LADIES AND GENTLEMEN, I ASK YOU TO GO BACK IN AT THE CONCLUSION OF THE DEFENSE ARGUMENT AND THE JUDGE'S CHARGE TO DELIBERATE AND TO SPEAK THE TRUTH. THE TRUTH BEING THAT WILLIAM ARTHUR KELLY IS GUILTY OF MURDER, ARMED ROBBERY, KIDNAPPING AND THE USE OF A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME.

[1651] **PRELIMINARY INSTRUCTIONS TO THE JURY – SENTENCING PHASE BEGINS**

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LADIES AND GENTLEMEN OF THE JURY, THE DEFENDANT, WILLIAM ARTHUR KELLY, WAS CONVICTED ON SEPTEMBER 17, 1998, OF THE OFFENSE OF MURDER AND THE OFFENSES OF KIDNAPPING,

ARMED ROBBERY AND POSSESSION OR DISPLAY OF A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME.

IT THEREFORE BECOMES NECESSARY FOR US TO HOLD THIS ADDITIONAL PROCEEDING WHICH WILL DETERMINE THE PUNISHMENT THAT THE COURT IS TO IMPOSE UPON THE DEFENDANT.

SECTION 16-3-20 OF THE CODE, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, PROVIDES IN PART AS FOLLOWS: A [1652] PERSON WHO IS CONVICTED OF OR PLEADS GUILTY TO MURDER, MUST BE PUNISHED BY DEATH OR IMPRISONMENT FOR LIFE. THAT SECTION, AS FURTHER AMENDED, ALSO PROVIDES IN PART: UPON CONVICTION OF A DEFENDANT OF MURDER, THE COURT SHALL CONDUCT A SEPARATE SENTENCING PROCEEDING TO DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT.

SO OUR PURPOSE IN CONDUCTING THE PROCEEDING IN WHICH WE ARE NOW ENGAGED IS TO DETERMINE WHETHER THE DEFENDANT, WILLIAM ARTHUR KELLY, SHOULD BE SENTENCED BY THE COURT TO DEATH OR TO LIFE IMPRISONMENT.

WITH RESPECT TO YOUR PARTICULAR ROLE IN THIS PROCEEDING, YOU WILL BE ASKED TO RECOMMEND TO THE COURT WHETHER IT SHOULD SENTENCE THE DEFENDANT, WILLIAM ARTHUR KELLY, TO DEATH OR TO LIFE IMPRISONMENT.

DURING THE SENTENCING PROCEEDING, THE STATE AND THE DEFENDANT WILL HAVE AN

OPPORTUNITY TO INTRODUCE ADDITIONAL EVIDENCE IN AGGRAVATION, EXTENUATION OR MITIGATION AND BOTH SIDES WILL HAVE AN OPPORTUNITY TO PRESENT ARGUMENTS FOR AND AGAINST THE DEATH PENALTY. SHOULD YOU RECOMMEND A SENTENCE OF LIFE IMPRISONMENT OR SHOULD YOU RECOMMEND A SENTENCE OF DEATH, THAT IS THE ONLY ISSUE INVOLVED HERE.

AFTER THE LAST ARGUMENT HAS BEEN MADE TO YOU CONCERNING THE PUNISHMENT THAT I SHOULD IMPOSE UPON THE DEFENDANT, THE COURT WILL THEN GIVE YOU CERTAIN INSTRUCTIONS AND YOU WILL THEN RETIRE TO DETERMINE WHETHER A DEATH SENTENCE OR A LIFE SENTENCE IS TO BE RECOMMENDED.

WE WILL NOW BEGIN THIS PHASE.

SOLICITOR.

[1653] **OPENING STATEMENTS BY THE SOLICITOR**

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THE SOLICITOR: MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY, AS JUDGE CLARY HAS TOLD YOU, THE GUILT PHASE, THE FIRST PHASE IS OVER WITH. AND NOW WE GET INTO THAT SECOND PHRASE [sic], THE SENTENCING PHASE, TO IMPOSE THE APPROPRIATE SENTENCE THAT FITS THE CRIME. YOU HAVE DONE YOUR

DUTY IN THE FIRST PART. YOU FOUND THE DEFENDANT GUILTY OF MURDER BEYOND A REASONABLE DOUBT. AS A MATTER OF FACT, BEYOND ALL DOUBT. WE DON'T HAVE TO GO BACK THERE. HE NO LONGER SITS OVER THERE WITH THAT CLOAK OF INNOCENCE WRAPPED AROUND HIM. HE'S STRIPPED NAKED AS A COLD-BLOODED CONNIVING, CALCULATED MURDERER. AND I HOPE YOU NEVER IN YOUR LIVES AGAIN HAVE TO EXPERIENCE WHAT YOU ARE EXPERIENCING RIGHT NOW. BEING SOME THIRTY FEET AWAY FROM SUCH A PERSON. MURDERER.

WE'VE GOT ONE MORE DUTY TO DO. WE'VE GOT ONE MORE THING TO DECIDE, THE SENTENCE. AND THERE'S ONLY ONE SENTENCE FOR THE BRUTAL, BLOODY, BUTCHERING MURDER HE COMMITTED. THE DEATH PENALTY. IT'S WARRANTED. IT'S THE APPROPRIATE SENTENCE. IT'S THE PUNISHMENT THAT FITS THE CRIME.

[1654] NOW, IN THIS PHASE, WE BRING THOSE TERMS INTO PLAY THAT YOU WERE ASKED ABOUT WHEN YOU SAT IN THIS CHAIR UP HERE MONDAY AND TUESDAY. AGGRAVATING CIRCUMSTANCES, MITIGATING CIRCUMSTANCES. AND IN THIS PHASE, THE LAW SAYS THE STATE MUST PROVE CERTAIN STATUTORY AGGRAVATING CIRCUMSTANCES. AND THERE COULD BE MITIGATING EVIDENCE FAVORABLE TO THE DEFENDANT SHOWN UNTO YOU. AND THIS GOES TO THE CHARACTER AND CHARACTERISTICS OF MURDERER WILLIAM ARTHUR KELLY. THIS GOES TO THE CIRCUMSTANCES SURROUNDING THE CRIME. AND YOU ARE GOING TO HEAR

SOME MORE ABOUT THAT. IT'S GOING TO BE, FOLKS, EVEN MORE GRUESOME THAN WHAT YOU HEARD WEDNESDAY AND THURSDAY. IT'S GOING TO BE UGLIER THAN WHAT YOU'VE HEARD FOR THE LAST TWO DAYS.

IN THE LAW BOOKS UP THERE BY THE JUDGE'S DESK THAT HE HAS, OUR GENERAL ASSEMBLY HAS WRITTEN INTO THE LAWS A FEW OTHER CIRCUMSTANCES, CRIMES OR ACTS THAT HAVE TO SURROUND A MURDER. THEY ARE CALLED STATUTORY BECAUSE THEY ARE IN THE STATUTES. STATUTORY AGGRAVATING CIRCUMSTANCES. AND IT'S OUR JOB TO PROVE TO YOU AT LEAST ONE OUT OF THOSE LAW BOOKS THAT SURROUNDED THESE CRIMES AT THE K.F.C. ON FRIDAY, JANUARY THE 5TH. ALL WE HAVE TO DO IS PROVE ONE FOR YOUR CONSIDERATION BEYOND A REASONABLE DOUBT FOR YOU TO IMPOSE THE DEATH PENALTY.

BUT YOU KNOW WHAT? WE ARE GOING TO SUBMIT FIVE TO YOU. FIVE. SURROUNDING THE MURDER, THERE WAS A [1655] STATUTORY AGGRAVATING CIRCUMSTANCE OR CRIME OF KIDNAPPING. SURROUNDING THE MURDER, THERE WAS A STATUTORY AGGRAVATING CIRCUMSTANCE OF ARMED ROBBERY. SURROUNDING THE MURDER, THERE WAS A STATUTORY AGGRAVATING CIRCUMSTANCE OF LARCENY WITH A DEADLY WEAPON. SURROUNDING THE MURDER WAS THE STATUTORY AGGRAVATING CIRCUMSTANCE OF BURGLARY, GOING INTO A PLACE WITHOUT LAWFUL CONSENT WITH THE INTENT TO COMMIT A CRIME. CAN BE IN THE NIGHTTIME, CAN BE WHEN SOMEBODY GOES

IN THERE ARMED WITH A KNIFE, A DEADLY WEAPON, IF SOMEBODY CAUSES PHYSICAL INJURY TO ANOTHER IN A BUILDING, IF THEY DISPLAY A KNIFE OR DEADLY WEAPON. ALL OF THESE THINGS. AND THEN FIVE AND PROBABLY THE WORST ONE OF ALL, SURROUNDING THE MURDER, IT WASN'T JUST A MURDER. IT WAS ACCOMPLISHED WITH THE STATUTORY AGGRAVATING CIRCUMSTANCE OF PHYSICAL TORTURE. PHYSICAL TORTURE. WE ARE GOING TO PROVE THAT TO YOUR SATISFACTION. WE ONLY HAVE TO PROVE ONE. YOU CAN FIND ONE. YOU CAN FIND TWO. YOU CAN FIND THREE. YOU CAN FIND FOUR. YOU CAN FIND FIVE. BUT IF YOU FIND JUST ONE ALONE, YOU MAY IMPOSE THE DEATH PENALTY AND WE HAVE TO PROVE THAT TO YOU BEYOND A REASONABLE DOUBT AND I WELCOME THAT OPPORTUNITY.

AND THE JUDGE IS GOING TO TELL YOU THIS. EVEN WITH ALL OF THAT, EVEN WITH ALL OF THOSE AGGRAVATING CIRCUMSTANCES, YOU CAN RETURN A SENTENCE OF LIFE FOR ANY REASON OR NO REASON AT ALL. IT'S UP TO YOU.

[1656] YOU KNOW IT'S APPROPRIATE – IT'S IRONIC AND APPROPRIATE THAT WE ARE STARTING COURT HERE ON A FRIDAY NIGHT. YOU REMEMBER WHAT DAY JANUARY THE 5TH WAS. YOU REMEMBER WHAT NIGHT IT WAS THAT SHIRLEY SHEALY WAS BUTCHERED? ABOUT 6:15 OR 6:20 THAT NIGHT, HE ALREADY HAD HIS PLANS IN ACTION. THE SAME FRIDAY NIGHT. AS SHIRLEY SHEALY WAS GOING ABOUT HER BUSINESS EARNING A LIVING, HE ALREADY HAD HIS KNIFE. HE ALREADY HAD

HIS DUCT TAPE. HE ALREADY HAD HIS GLOVES AND HE ALREADY HAD HIS BUTCHERING PLAN. ALL HE HAD TO DO THEN WAS JUST TO CARRY IT OUT. PUT HIS PLANS INTO ACTION. AND LATER ON HE DID. HE HAD HIS CAR BACK OVER THERE ON HARTLEY STREET WAITING. IN HER CAR, – BRINGING HER BACK. GOING INSIDE THAT BUILDING WITHOUT LAWFUL AUTHORITY AND WITHOUT VALID CONSENT. THIS LADY WAS OVER SIX MONTHS PREGNANT, FOLKS, AND HE KNEW IT. HE TOLD YOU SO IN HIS CONFESSION. THAT'S EVEN MORE AGGRAVATED. OVER SIX MONTHS PREGNANT. SHE HAD ALREADY HAD ONE BABY. AND THAT BABY WAS BORN PREMATURE. THAT FIRST BABY WAS BORN WHEN SHE WAS ABOUT – JUST ABOUT SEVEN MONTHS PREGNANT AND NOW SHE'S SIX – OVER SIX MONTHS PREGNANT AGAIN. THE DEFENDANT KNOWING IT AND HE CARRIES OUT THIS PLAN.

THAT'S AGGRAVATION WITHIN ITSELF. AND I WANT YOU TO THINK WHEN YOU LEAVE HERE TODAY – THE JUDGE SAYS HE WANTS TO CLOSE DOWN ABOUT 10 O'CLOCK –

MR. KIRKLAND: OBJECTION, YOUR HONOR.

[1657] WE WANT TO RENEW OUR MOTION ON THE SAME GROUNDS REGARDING THAT ISSUE WE DISCUSSED.

THE COURT: THE OBJECTION IS NOTED. IT'S OVERRULED.

THE SOLICITOR: WHEN WE LEAVE HERE TONIGHT AROUND 10 O'CLOCK, THAT FRIDAY NIGHT, SHIRLEY SHEALY AND HER BABY HAD LESS THAN AN HOUR TO LIVE AT HIS HANDS.

THERE'S ONLY ONE SENTENCE FOR THIS CASE. THERE'S ONLY ONE SENTENCE THAT'S WARRANTED. THERE'S ONLY ONE SENTENCE THAT'S APPROPRIATE. THERE'S ONLY ONE SENTENCE THAT FITS THE CRIME.

WE HAVE ASKED FOR THE DEATH PENALTY. WE ARE GOING TO BE VIGOROUSLY SEEKING THE DEATH PENALTY AND, FOLKS, WE EXPECT THE DEATH PENALTY.

[1661] **CHARLES JORDAN, III – DIRECT BY MR. CHASE**

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CHARLES JORDAN, III,

FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: STATE YOUR FULL NAME, PLEASE.

THE WITNESS: MY NAME IS CHARLES P. JORDAN, III, J-O-R-D-A-N.

DIRECT EXAMINATION

BY MR. CHASE:

Q OFFICER JORDAN, I'M GOING TO ASK YOU TO SPEAK UP. [1662] MAKE SURE EVERYBODY CAN HEAR YOU, OKAY?

A YES, SIR.

Q OFFICER JORDAN, WHERE ARE YOU EMPLOYED?

A LEXINGTON COUNTY DETENTION CENTER.

Q RIGHT OVER HERE ON GIBSON ROAD?

A YES, SIR.

Q WHAT ARE YOUR DUTIES OVER THERE?

A BASICALLY, IT'S SECURITY AND WELFARE OF THE INMATES.

Q HOW LONG HAVE YOU BEEN WORKING OVER THERE?

A OCTOBER WILL BE TWO YEARS.

[1663] Q WHERE – WHERE ARE YOU SPENDING MOST OF YOUR TIME AS A CORRECTIONAL OFFICER?

A BASICALLY, I SPEND MOST OF MY TIME WORKING THE FLOORS.

Q WHEN YOU SAY WORKING THE FLOORS, WELL, EXPLAIN TO THE JURY WHAT THAT MEANS?

A BASICALLY, THERE ARE THREE FLOORS AT THE DETENTION CENTER. EACH FLOOR, BASICALLY

HOUSES ABOUT 102 INMATES. OUR MAIN JOB TO DO WHILE WE WORK THERE, OUR TWELVE-HOUR DAY IS TO GO IN AND MAKE SURE ALL OF THE ROOMS ARE THE WAY THEY ARE SUPPOSED TO BE. AIN'T NOBODY TRYING TO ESCAPE. THAT NO OTHER INMATES ARE TRYING TO HURT THEMSELVES OR ANOTHER INMATE –

MS. FULLWOOD: YOUR HONOR, WE ARE HAVING SOME PROBLEMS HEARING THE WITNESS.

THE COURT: YES, SIR. IF YOU WOULD, PLEASE SPEAK UP. YOU DON'T NEED TO PULL THE MICROPHONE ANY CLOSER TO YOU. YOU JUST NEED TO SPEAK UP A LITTLE BIT BECAUSE IF YOU PULL THAT MICROPHONE TOO CLOSE TO YOU, IT WILL START BARKING AT YOU,

THE WITNESS: YES, SIR.

MR. CHASE: HOW WOULD YOU GO ABOUT DOING THAT? DO YOU ACTUALLY GO ONTO THE FLOORS?

A YES, SIR. WE ARE SUPPOSED TO MAKE A ROUND EVERY 10 OR 15 MINUTES.

[1664] Q SO ARE YOU ACTUALLY IN, AROUND AND AMONG THE INMATES AT THE LEXINGTON DETENTION CENTER?

A YES, SIR.

Q YOU SAID THEY ARE ON FLOORS?

A YES, SIR.

Q HOW ARE THOSE FLOORS SET UP?

A THERE ARE THREE FLOORS AND YOU HAVE THREE WINGS TO A FLOOR.

Q AND APPROXIMATELY, HOW MANY CELLS WOULD BE ON EACH ONE OF THOSE WINGS, DO YOU KNOW?

A EACH WING – WELL, YOU HAVE A, B, AND A C WING. YOUR B WING HAS TEN CELLS; YOUR A AND YOUR C HAVE TWELVE.

Q NOW, WOULD YOU BE – WOULD YOU ALWAYS BE ON ONE PARTICULAR FLOOR OR DO YOU FLOAT AROUND DEPENDING ON WHICH DAY YOU ARE AT WORK?

A NO, SIR. YOU ROTATE FROM FLOOR TO THE ANNEX TO BOOKING.

Q AND WHAT IS ANNEX? WHAT'S THE ANNEX?

A THE ANNEX IS WHERE YOU KEEP YOUR MINIMUM SECURITY INMATES. BASICALLY, I MEAN, LIKE YOUR FRAUDULENT CHECKS. I MEAN FAMILY COURT, STUFF LIKE THAT.

Q AND WHAT'S BOOKING?

A BOOKING IS WHERE THEY BRING INMATES IN AND WHERE YOU DISCHARGE THEM.

[1665] Q AND YOU WOULD ROTATE THROUGH ALL OF THOSE PLACES –

A YES, SIR.

Q – AS A CORRECTIONAL OFFICER?

A YES, SIR.

Q NOW, YOU TALKED ABOUT WHEN YOU WOULD BE ON THE FLOORS, THAT YOU WOULD ACTUALLY BE CHECKING ON THE SAFETY AND WELFARE OF THE INMATES. HOW DO YOU GO ABOUT DOING THAT?

A BASICALLY, WE – WHEN WE PASS OUT THE FOOD TRAYS AND STUFF IN THE MORNING, WE'LL CHECK THE CELLS THEN AND THEN AFTER WE PASS OUT THE TRAYS AND PICK THEM UP, WE'LL DO A CLEAN-UP. BASICALLY, CLEAN-UPS ARE FOR THE INMATES TO CLEAN THEIR CELLS AND ALSO FOR YOU TO GIVE YOUR OPPORTUNITY TO GO IN AND CHECK OUT THE CELLS.

Q SO WHEN YOU SAY, YOU CHECK OUT THE CELLS, WHAT ARE YOU DOING ON A DAILY BASIS?

A BASICALLY, YOU WANT TO INSPECT FOR ANYTHING OUT OF THE ORDINARY. YOU WANT TO SEE IF ANY OF THE FAUCETS ARE MISSING. YOU WANT TO CHECK AND SEE IF THERE'S ANY NEW – WHERE THEY ARE TRYING TO DIG OUT, IF THERE ARE ANY NEW HOLES OR ANYTHING LIKE THAT.

Q NOW, AS OPPOSED TO THAT VISUAL CHECK THAT YOU ARE DOING ON A DAILY BASIS, WHAT'S A SHAKEDOWN?

A A SHAKEDOWN CONSISTS OF WHENEVER YOU HAVE A COUPLE OF OFFICERS THAT GOES UP ONTO THE FLOORS AND THEY'LL ACTUALLY [1666] GO IN AND MAKE SURE THE INMATES AIN'T GOT NO CONTRABAND. CONTRABAND CONSISTS OF ANYTHING THAT'S EXTRA, MORE THAN TWO

SHEETS, TWO BLANKETS, EXTRA JUMPSUITS, TOO MANY PENS, TOO MANY PENCILS, AND TOO MUCH MEDICATION OR ANYTHING TO THAT EFFECT.

Q IN OTHER WORDS, YOU'VE GOT CERTAIN RULES THAT ARE SET UP OVER AT THE DETENTION CENTER?

A YES, SIR.

Q ABOUT HOW THEY CAN – HOW INMATES CAN ACT AND WHAT THEY CAN HAVE?

A YES, SIR.

Q NOW, IN YOUR TWO YEARS THAT YOU'VE BEEN OVER THERE WORKING AS A CORRECTIONAL OFFICER, HAVE YOU COME IN CONTACT WITH AN INMATE BY THE NAME OF WILLIAM KELLY?

A YES, SIR. HE'S ACTUALLY THE FIRST INMATE I ACTUALLY HAD TO WRITE UP WITHIN MY FIRST MONTH THERE.

Q WHAT HAPPENED IN THAT SITUATION?

A BASICALLY, I GUESS, HE DIDN'T LIKE THE WAY I WAS DOING MY JOB. SO WHEN I CAME AND OPENED UP HIS CELL DOOR, HE CALLED ME A FUCKING DUMB ASS. AND I TURNED BACK AROUND AND ASKED HIM TO STEP BACK INTO HIS CELL. HE REFUSED. I ASKED HIM SEVERAL TIMES AFTER THAT. HE SAID THE ONLY WAY THAT I'M GOING TO GET HIM BACK IN THAT CELL IF I CALL FOR BACKUP. SO I CALLED FOR BACKUP AND THEY ESCORTED HIM BACK INTO HIS CELL.

[1667] Q OFFICER JORDAN, FROM THAT TIME ON, DID YOU BEGIN TO KEEP AN EYE ON WILLIAM ARTHUR KELLY?

A YES, SIR. ANY TIME THAT I HAVE A DEALING WITH ANY INMATE, ANY TIME I HAVE TO WRITE THEM UP OR ANYTIME I HAVE ANY DISCREPANCIES WITH THEM, USUALLY I KEEP AN EYE ON THEM. BUT NOT TOO LONG AFTER THAT WE HAD A – WELL, ACTUALLY, A LONG TIME AFTER THAT. ABOUT – PROBABLY ABOUT FOUR OR FIVE MONTHS AGO –

Q WELL, LET ME ASK YOU THIS, WERE YOU WORKING ON AUGUST THE 19TH –

A YES, SIR.

Q – OF THIS YEAR –

MR. KIRKLAND: OBJECTION.

YOUR HONOR, WE HAVE A MATTER OF LAW DEALING WITH THIS ISSUE.

THE COURT: ALL RIGHT.

LADIES AND GENTLEMEN OF THE JURY, I HAVE A MATTER OF LAW TO TAKE UP WITH THE LAWYERS. I'M GOING TO SEND YOU TO THE JURY ROOM WHILE I DISCUSS THAT MATTER WITH THEM.

ONCE AGAIN, PLEASE DO NOT DISCUSS THIS CASE WHILE YOU ARE IN THE JURY ROOM. YOU MAY BE EXCUSED.

(JURY OUT.)

THE COURT: ALL RIGHT, MR. KIRKLAND.

MR. KIRKLAND: THANK YOU, YOUR HONOR.

AT THIS TIME, YOUR HONOR, WE ARE OBJECTING TO AN [1668] INCIDENT, I BELIEVE, THEY ARE GOING TO SAY OCCURRED BACK ON 8/19/1998, WHICH IS AN ATTEMPTED ESCAPE ATTEMPT.

THE FACTS SURROUNDING THIS INCIDENT IS YOU HAD THREE INMATES IN ONE CELL. ALL THREE OF THEM HAVE BEEN CHARGED WITH THE ESCAPE ATTEMPT AND DESTRUCTION OF PROPERTY.

YOUR HONOR, WE BELIEVE THAT RULE 404 (B) AS WELL AS *LYLE* AND THE OTHER LINES OF CASES APPLY HERE AS FAR AS PRIOR BAD ACTS AND WRONGS.

YOUR HONOR, THERE'S NO WAY THEY CAN PROVE BY CLEAR AND CONVINCING EVIDENCE THAT BILLY KELLY WAS THE ACTOR IN THIS PARTICULAR MATTER. THEY CHARGED THREE INDIVIDUALS. HE HAPPENED TO BE IN THAT CELL. IN FACT, MY UNDERSTANDING IS THAT WHERE THIS MORTAR WAS AROUND THIS PARTICULAR BLOCK WAS ANOTHER INMATE'S CELL. I BELIEVE IT WAS RIGHT ABOVE THE TOP BUNK.

SO I DON'T SEE HOW THEY CAN EVEN –

THE COURT: YOU SAY IT'S ANOTHER INMATE'S CELL OR ARE YOU TELLING ME THERE WERE THREE PEOPLE IN THERE?

MR. KIRKLAND: NO. IT'S THREE INMATES IN THERE, I'M SORRY. HIS BED, ANOTHER INMATE'S BED, THE TOP BUNK.

THE COURT: ALL RIGHT, MR. CHASE.

MR. CHASE: YOUR HONOR, THE SITUATION WE ARE DEALING WITH HERE IS THREE INMATES IN AN EIGHT BY TEN CELL WHEREIN THERE HAS BEEN SUBSTANTIAL REMOVING OF THE MORTAR [1669] AROUND A CINDER BLOCK THAT IS AN EIGHT BY TEN CELL LITERALLY. I MEAN, YOU CAN BASICALLY SPREAD YOUR ARMS AND BE – AND TOUCH BOTH WALLS. THERE'S NO QUESTION ABOUT THE FACT – NOW, THEY CAN ARGUE ALL DAY LONG THAT HE WASN'T INVOLVED, BUT HE DARN SURE KNEW ABOUT IT. THAT MAKES HIM A CO-CONSPIRATOR OR AT A MINIMUM, A CO-CONSPIRATOR. IT DEFINITELY GOES TO HIS CHARACTER. SOMETHING LIKE THAT CAN'T GO ON IN A CELL THAT SMALL. SO DEFINITELY WOULD BE ADMISSIBLE IN THIS PHASE OF THE TRIAL.

MR. KIRKLAND: JUDGE, UNDER *STATE VERSUS CUTRO*, WE HAD TWO BABIES THAT DIED. WE HAD A HUSBAND AND A WIFE AND THAT CASE, AS YOU WELL KNOW, WAS JUST DECIDED BY OUR SUPREME COURT AND JUSTICE MOORE DISCUSSES SPECIFICALLY ABOUT THE ACTOR AND TALKS ABOUT THE CLEAR AND CONVINCING STANDARD.

THE COURT: WELL, MR. KIRKLAND, I WANT YOU TO UNDERSTAND THAT WE ARE A LITTLE BIT DIFFERENT THAN YOUR *CUTRO* CASE. WE'RE IN A

DEATH PENALTY. WE'RE IN THE SENTENCING PHASE –

MR. KIRKLAND: I UNDERSTAND.

THE COURT: – SO – AND I'VE SEEN A NUMBER OF OPINIONS THAT JUSTICE MOORE HAS WRITTEN IN THIS REGARD IN REGARDS TO EVIDENCE THAT CAN BE PRESENTED IN THE SENTENCING PHASE. SO YOU CAN TALK ABOUT *CUTRO* ALL YOU WANT TO, BUT LET'S MAKE IT RELEVANT TO WHAT WE'RE HERE ABOUT.

[1670] MR. KIRKLAND: YOUR HONOR, I –

THE COURT: I JUST READ THAT CASE.

MR. KIRKLAND: I UNDERSTAND THAT, BUT, YOUR HONOR, I THINK WHAT WE ARE TALKING ABOUT IS HERE THEY STILL HAVE TO HAVE THE THRESHOLD TO PROVE THAT HE IS THE ACTOR IN THIS MATTER. WE'VE GOT THREE PEOPLE CHARGED AND WHAT THEY'RE TRYING TO DO IS TELL THIS JURY THAT HE'S ESSENTIALLY THE ONE THAT DID IT.

BEG THE COURT'S INDULGENCE.

JUDGE, I MEAN, THEY ARE TRYING TO PUT THIS IN AS EVIDENCE OF AGGRAVATION WHICH, OF COURSE, DOES HAVE TO DO WITH THIS PARTICULAR PHASE OF THE TRIAL AND WE FEEL THAT EVEN BY ALLOWING THAT IN THERE IS A VIOLATION OF HIS EIGHTH AMENDMENT RIGHTS. WE STILL ALSO REFER TO 404(B) AND THE *LYLE* LINE OF CASES IN TERMS OF BURDEN OF PROOF ON THE STATE.

THE COURT: ANYTHING ELSE, MR. CHASE?

MR. CHASE: NOTHING AT THIS TIME, YOUR HONOR.

THE COURT: WELL, I UNDERSTAND THE ARGUMENT THAT YOU MAKE, MR. KIRKLAND, BUT I THINK THAT WHEN WE GET INTO THE SENTENCING PHASE OF A TRIAL, THERE ARE TWO OR THREE THINGS THAT COME TO MIND HERE TO ME.

NUMBER ONE, I UNDERSTAND THAT HE WAS ONE OF THREE INDIVIDUALS IN THAT CELL. CERTAINLY, HE HAS SOME – NOT ONLY DOES HE HAVE SOME RIGHTS, BUT HE ALSO HAS SOME [1671] RESPONSIBILITIES BECAUSE IN AN EIGHT BY TEN CELL, HE'S GOING TO KNOW WHAT'S GOING ON. IT WOULD BE HIGHLY UNLIKELY THAT ANYTHING'S GOING TO GO ON IN THAT CELL THAT ANYONE DOESN'T KNOW THAT'S GOING ON.

NUMBER TWO, I THINK THAT THIS GOES TO CHARACTER. AND WE ARE TALKING ABOUT HIS CHARACTERISTICS AND AS A RESULT OF THAT, I'M GOING TO DENY YOUR MOTION. I THINK THAT IT'S PROPER EVIDENCE TO BE PRESENTED IN THE SENTENCING PHASE.

THE MOTION IS DENIED.

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Q OFFICER JORDAN, I ASKED YOU BEFORE, WERE YOU WORKING ON THE DAY OF AUGUST THE 19TH, 1998?

A YES, SIR.

Q DO YOU RECALL WHAT FLOOR YOU WERE WORKING ON?

A I WAS WORKING THIRD FLOOR.

Q NOW, DURING THE COURSE OF YOUR DUTIES, YOU SAID THAT YOU WOULD GO THROUGH AND YOU WOULD CHECK THE ROOMS?

[1672] A YES, SIR.

Q DID YOU FIND ANYTHING IN PARTICULAR ON THAT DAY IN CELL 3-A-7?

A YES, SIR. WHENEVER I – WHENEVER I FIRST WALKED IN TO PASS OUT THE TRAYS THAT MORNING, IN 3-A-7, ONE OF THE BLOCKS RIGHT OVER THE TOP BUNK, IT LOOKED LIKE IT HAD BEEN INKED AROUND WITH A PEN, AROUND THE MORTAR JOINT.

Q LET ME ASK YOU THIS. HOW MANY INMATES WERE IN THAT CELL?

A THREE.

Q WAS WILLIAM ARTHUR KELLY ONE OF THOSE INMATES?

A YES, SIR.

Q AND YOU SAID THAT ONE OF THE – ONE OF THE WHAT LOOKED LIKE IT HAD BEEN INKED AROUND?

A THE MORTAR JOINTS.

Q OKAY. WHERE WOULD THE MORTAR JOINTS BE?

A ACTUALLY AROUND THE BRICK.

Q IF YOU COULD, DESCRIBE FOR THE JURY EXACTLY WHAT THE INSIDE OF A CELL WOULD LOOK LIKE AND WHAT IT'S MADE UP OF?

A OKAY. YOU HAVE AN EIGHT BY TEN CELL. WHEN YOU FIRST WALK IN, YOUR TOILET IS GOING TO BE RIGHT TO YOUR RIGHT. THEN YOU'RE GOING TO HAVE A SET OF BUNK BEDS, STEEL BUNK BEDS. YOU ARE GOING TO HAVE A SMALL RECTANGULAR WINDOW AND YOU'RE GOING TO HAVE AN INMATE THAT'S SLEEPING ON THE FLOOR. AND THAT'S BASICALLY WHAT THE ROOM IS MADE UP OF.

[1673] Q AND WHAT ARE THE WALLS MADE OF?

A CEMENT AND CINDER BLOCK.

Q SO THE MORTAR THAT YOU'VE DESCRIBED, THAT'S AROUND THOSE CINDER BLOCKS?

A YES, SIR.

Q NOW, YOU SAID THERE WAS ONE THAT WAS – THAT APPEARED THAT WASN'T – IT WAS OUT OF THE ORDINARY CONDITION?

A WELL, YEAH. IT LOOKED KIND OF OUT OF THE ORDINARY, BUT IF YOU FIRST WALK UP THERE, IT'S NOT TOO OUT OF THE ORDINARY BECAUSE THE INMATES, THEY DRAW ALL OVER THE WALLS ANYWAY. AND WHENEVER I SEEN THAT, I WASN'T TOO WORRIED ABOUT IT AT THE TIME, BUT THEN AS THE DAY PROGRESSED, I DECIDED I'LL GO BACK AND

INVESTIGATE A LITTLE BIT MORE CONSIDERING WHO WAS THE INMATES THAT WAS IN THE CELL.

[1674] OFFICER JORDAN, YOU INDICATED THAT YOU SAW SOMETHING IN THE CELL THAT KIND OF THREW UP A RED FLAG FOR YOU. LATER IN THE DAY, DID YOU GO BACK AND FOLLOW-UP ON YOUR CONCERN FROM WHAT YOU HAD SEEN? THE WITNESS: YES, SIR. LATER UP IN THE AFTERNOON, PROBABLY A LITTLE BIT PAST FOUR O'CLOCK, I WENT BACK IN THE CELL AND ACTUALLY WENT UP AND OBSERVED IT, LOOKED AT IT AND IT WAS ACTUALLY TOILET PAPER WITH INK ON IT THAT WAS STUCK INTO THE CRACKS AROUND THE BLOCK.

Q NOW, YOU CAN DESCRIBE – YOU SAID THAT YOU WENT IN – ABOUT WHAT TIME WOULD YOU HAVE GONE IN IN THE MORNING?

A SIR?

Q ABOUT WHAT TIME WOULD YOU HAVE DONE THAT –

A ABOUT WHAT TIME? WELL, THE FIRST TIME I GO INTO THE CELL IS GOING TO BE PROBABLY AROUND 6:30 WHEN WE BRING IN THE FOOD TRAYS.

Q AND LATER ON, YOU SAID YOU WENT BACK INTO THE CELL?

A YES.

[1675] AND WHAT TIME WAS THAT?

A IN BETWEEN FOUR AND 4:20, SOMEWHERE ABOUT THAT TIME.

Q IS THAT NEAR THE END OF YOUR SHIFT?

A YES, SIR.

Q NOW, WHEN YOU WENT IN THERE, WHAT WERE YOU ACTUALLY CHECKING?

A I WAS ACTUALLY CHECKING – YOU'RE TALKING ABOUT IN THE AFTERNOON?

Q UH-HUH.

A I WAS ACTUALLY CHECKING THE WALL THAT LOOKED LIKE IT HAD INK AROUND THE MORTAR JOINT.

Q NOW, WHERE DID YOU GO TO IN THAT CELL TO CHECK ON THAT?

A I WALKED – WHEN I OPENED THE DOOR, I WENT STRAIGHT BACK AND RIGHT ABOVE THE TOP BUNK, ABOUT TWO BLOCKS UP, I WAS CHECKING OUT THAT CEMENT RIGHT THERE AROUND THE JOINT AND IT ACTUALLY WAS TOILET PAPER.

Q OKAY. HOW BIG WOULD YOU SAY – IF YOU COULD JUST HOLD UP YOUR HANDS FOR THIS JURY, HOW BIG ARE THOSE CINDER BLOCKS?

A IT'S PROBABLY – PROBABLY ABOUT THAT BIG (INDICATES).

Q AND ABOUT HOW HIGH WOULD YOU SAY?

A AND ABOUT THAT WIDE (INDICATES)

Q AND WHAT DID YOU SAY THAT YOU FOUND ONCE YOU ACTUALLY WENT IN THERE AND CHECKED ON THAT?

[1676] A IT WAS TOILET PAPER WITH INK ON IT AND IT WAS STUFFED BACK INTO THE CRACKS.

Q AND WHERE WOULD THAT HAVE BEEN IN RELATION TO THAT CINDER BLOCK?

A IT WAS AROUND THE CINDER BLOCK.

Q WHAT WOULD NORMALLY BE THERE AROUND THAT CINDER BLOCK?

A NORMALLY IT WOULD BE MORTAR, BUT THERE WAS NONE THAT I COULD SEE. IT WAS ALL TOILET PAPER.

Q SO IT WAS ACTUALLY TISSUE?

A YES, SIR.

Q WHAT CONDITION WAS IT IN? WAS IT DRY OR WAS IT WET?

A IT WAS DRY TO THE TOUCHED AREA THAT I TOUCHED.

Q ONCE YOU HAD FOUND THAT THAT CINDER BLOCK AND THAT MORTAR AROUND IT OR WHAT WAS SUPPOSED TO BE MORTAR AROUND IT WAS ACTUALLY TISSUE, DID YOU DO ANY FURTHER SEARCHING AT THAT POINT?

A NO, SIR, I DIDN'T SEARCH NO MORE, BUT I ASKED THE FELLOWS IN THE ROOM HOW LONG HAS THIS BEEN HERE AND THE FELLOW ON THE TOP BUNK HE REPLIED, WELL, IT'S BEEN HERE AS LONG AS I'VE BEEN HERE –

MR. KIRKLAND: OBJECTION, YOUR HONOR. IT'S HEARSAY.

THE COURT: SUSTAIN THE OBJECTION.

MR. CHASE: AFTER YOU HAD CONFRONTED THE PEOPLE [1677] IN THE CELL WHAT HAD HAPPENED, WHAT DID YOU DO?

THE WITNESS: I WENT BACK. I TALKED TO – I CALLED MY SERGEANT AND NOTIFIED HIM AND LET HIM KNOW. HE TOLD ME TO WRITE IT DOWN IN THE PASS-ON BOOK AND NOTIFY THE NEXT OFFICER THAT COMES ON SO THAT HE CAN DO A FURTHER INVESTIGATION ON IT.

Q SO YOU DIDN'T DO ANYMORE SEARCHING OF THAT CELL AT THAT POINT?

A NO, SIR.

Q BUT HAD YOU INFORMED – WERE THE INMATES ACTUALLY IN THAT CELL WHEN YOU WALKED IN AND CHECKED ON –

A YES, SIR.

Q – THE MORTAR?

A YES, SIR.

Q ALL THREE OF THEM WERE IN THERE?

A YES, SIR.

Q INCLUDING WILLIAM ARTHUR KELLY?

A YES, SIR.

Q AND THEY WERE THERE WHEN YOU LEFT?

A YES, SIR.

Q NOW, YOU SAID THAT YOU HAVE BEEN A CORRECTIONAL OFFICER FOR TWO YEARS?

A YES, SIR.

Q DURING THE COURSE OF THAT TIME, HAVE YOU – HOW MANY CELL CHECKS WOULD YOU SAY THAT YOU HAVE DONE?

[1678] A I COULDN'T EVEN BEGIN TO TELL YOU HOW MANY I'VE CHECKED.

Q THROUGH YOUR EXPERIENCE AS A CORRECTIONAL OFFICER, IF YOU HAD GONE BACK IN LATER THAT DAY AND NOT FOUND A TOOL –

MR. KIRKLAND: OBJECTION, YOUR HONOR –

MS. FULLWOOD: – THAT'S SPECULATIVE.

MR. KIRKLAND: – THAT'S SPECULATIVE AND HE'S ASKING A HYPOTHETICAL QUESTION.

THE COURT: I SUSTAIN THE OBJECTION.

MR. CHASE: HOW OFTEN – HOW LONG HAVE YOU BEEN A CORRECTIONAL OFFICER?

A TWO YEARS.

Q AS A PART OF YOUR DUTIES, DO YOU GO INTO CELLS AND ACTUALLY DO CHECKS?

A YES, SIR.

Q AND WHAT ARE YOU LOOKING FOR?

A WE ARE LOOKING FOR – I MEAN, ANY TYPE OF CONTRABAND. I MEAN, IT CAN BE ANYTHING

FROM CLOTHES - I MEAN, I'VE FOUND ANYTHING FROM CLOTHES TO SHANKS.

Q INCLUDING SHANKS. WOULD YOU ALSO - IF YOU SAW SIGNS THAT THERE HAD BEEN ANY SORT OF SCRAPPING [sic] BEING DONE ON THE WALL, WOULD YOU ACTUALLY BE LOOKING FOR A TOOL?

A YES, SIR.

Q AND IS THAT A PART OF YOUR DUTIES?

A YES, SIR.

[1679] Q AND ACTUALLY - HAVE YOU ACTUALLY DONE THAT IN THE PAST?

A YES, SIR.

Q IN FACT, HAVE YOU EVER HAD AN INMATE; FOR EXAMPLE, THAT WOULD HAVE HAD A TATTOO DONE? HAVE YOU EVER CHECKED -

A YES, SIR.

Q - BACK IN THE CELL TO TRY TO FIND IF THEY HAD A TOOL THAT WOULD HAVE BEEN USED FOR THAT?

A YES, SIR.

Q DO YOU ALWAYS FIND THE TOOL?

A NO, SIR.

Q AND YOU HAVE DONE THAT OVER THE COURSE OF TWO YEARS?

A YES, SIR.

Q BASED ON YOUR EXPERIENCE IN DOING THOSE SEARCHES, DOES THE FACT THAT YOU DON'T FIND A TOOL IN THERE SHOW THAT IT WASN'T DONE BY THE PEOPLE WHO WERE IN THAT CELL?

A NO, SIR.

[1692] **JACKIE D. GRANGER - DIRECT**
BY MR. CHASE

* * *

JACKIE D. GRANGER,

FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST NAME, SIR.

THE WITNESS: MY NAME IS JACKIE D. GRANGER. I SPELL MY LAST NAME G-R-A-N-G-E-R.

DIRECT EXAMINATION

BY MR. CHASE:

Q OFFICER GRANGER, WHERE ARE YOU EMPLOYED?

A LEXINGTON COUNTY DETENTION CENTER, SIR.

Q WHAT ARE YOUR DUTIES THERE?

A MASTER CORRECTIONAL OFFICER.

[1693] Q WHAT ARE THE DUTIES OF A MASTER CORRECTIONAL OFFICER?

A THE DUTIES OF A MASTER CORRECTIONAL OFFICER IS YOU ARE IN CHARGE OF THE BOOKING AREA. YOU ARE IN CHARGE OF EVERYTHING THAT GOES ON IN THE BOOKING AREA TO INCLUDE RECEIVING THE INMATES, YOU KNOW, AND PREPARE FOR COURT, BOND COURT THE NEXT MORNING, HOUSING THEM AND IF THEY NEED MEDICAL ATTENTION, IMMEDIATE MEDICAL ATTENTION, YOU MAKE SURE THAT IS TAKEN CARE OF AT THAT TIME, TOO, AND YOU MAKE SURE THEY GET THEIR PHONE CALLS.

Q DO YOU ALSO HAVE ANY ADDITIONAL SUPPORT DUTIES AS MASTER CORRECTIONAL OFFICER?

A YES, SIR, I DO. I AM ON CALL AS THE ASSISTANT TO THE SHIFT SERGEANT WHEN AND WHEREVER NEEDED IN THE WHOLE FACILITY.

Q AND HOW LONG HAVE YOU BEEN EMPLOYED OVER AT THE DETENTION CENTER?

A FOUR AND ONE-HALF YEARS, SIR.

Q WHAT EXPERIENCE DO YOU HAVE PRIOR TO THAT?

A MILITARY OVER 24 YEARS.

Q AND WHAT BRANCH?

A ARMY.

Q NOW, IN YOUR DUTIES OVER AT THE DETENTION CENTER, HAVE YOU EVER HAD CONTACT WITH THE INMATES?

A YES, SIR.

Q AS A PART OF YOUR CONTACT WITH THE INMATES, HAVE YOU [1694] EVER PERFORMED CELL CHECKS?

A PERIODICALLY, SIR. WE DO CELL CHECKS ALMOST ON A MONTHLY BASIS.

Q NOW, ARE THERE DIFFERENT TYPES OF CELL CHECKS THAT CORRECTIONAL OFFICERS WOULD DO ON A DAILY BASIS –

A YES, SIR –

Q – VERSUS A SHAKEDOWN?

A A SHAKEDOWN IS CONDUCTED PERIODICALLY. BASICALLY ONCE A MONTH WE TRY TO DO A SHAKEDOWN OF EVERY CELL IN THE FACILITY. IT DOES NOT ALWAYS HAPPEN DUE TO MANPOWER SHORTAGE, BUT WE TRY TO.

Q WHAT'S INVOLVED IN A SHAKEDOWN?

A WHEN YOU GO INTO – TO DO A SHAKEDOWN, YOU ARE LOOKING FOR ANY OBJECT THAT IS NOT AUTHORIZED BY JAIL POLICY. WHEN YOU WALK INTO – FIRST OF ALL, YOU OPEN THE DOOR. YOU ASK THE INMATES TO STEP OUT INTO THE HALLWAY. THE INMATES STEP OUT IN THE HALLWAY. YOU PAT THEM DOWN, MAKE SURE THEY ARE NOT CONCEALING NOTHING ON THEIR PERSON

AND THE WAY I CONDUCT A CELL SHAKE MYSELF IS I FIND MYSELF A STARTING POINT AND I START AT THAT POINT AND I WORK MY WAY COMPLETELY AROUND THE ROOM, BACK TO MY STARTING POINT. THAT WAY I ASSURE MYSELF I DON'T MISS ANYTHING OUT OF THE ORDINARY.

Q WHAT ARE YOU CHECKING WHEN YOU ARE DOING THAT?

A CONTRABAND, ANYTHING THAT MIGHT – ANY PLACE THAT [1695] MIGHT HAVE BEEN TAMPERED ALONG THE WALL FOR POSSIBLE ESCAPE REASONS, SHANKS. LIKE I SAID BEFORE, ANY MATERIAL, OBJECT THAT IS NOT AUTHORIZED BY JAIL POLICY.

Q OFFICER GRANGER, WERE YOU INVOLVED IN A SHAKEDOWN ON AUGUST THE 19TH OF THIS YEAR? LAST MONTH?

A YES, I WAS.

Q WHERE WAS THAT?

A WHEN WAS THAT?

Q WHERE WAS THAT? WHAT CELL?

A 3-A-7. FLOOR THREE – EXCUSE ME, FLOOR THREE CELL A-7.

Q AND WHAT INFORMATION DID YOU HAVE AT THAT TIME THAT LED YOU TO GO TO THE SHAKEDOWN?

A WE WERE INFORMED BY THE – OUR OFFICER THAT THE OFFICER HE RELIEVED HAD SAID THAT

THERE WAS POSSIBLE TAMPERING BEING DONE IN 3-A-7.

Q NOW, BASED ON THAT, WHAT DID YOU DO AND WHO DID YOU DO IT WITH?

A WE HELD OFF CHECKING THE CELL UNTIL AFTER LOCKDOWN WHICH WAS –

Q WHY WAS THAT?

A WE DO THAT FOR SAFETY REASON FOR US AND OTHER INMATES THAT MIGHT BE WANDERING IN THE ARAE DURING REC TIMES.

Q WHY DOES THAT INCREASE YOUR SAFETY?

A BECAUSE WE – IT INCREASES OUR SAFETY BECAUSE YOU CAN [1696] PAY MORE ATTENTION TO WHAT YOU ARE DOING AND NOT WORRY ABOUT OTHER INMATES BEING IN THE DAYROOM OR WHEREVER TRYING TO DISTRACT YOUR ATTENTION.

Q AND IF YOU COULD EXPLAIN TO THE JURY WHAT EXACTLY LOCKDOWN IS?

A LOCKDOWN IS CONDUCTED AT ELEVEN-THIRTY EVERY NIGHT AND WHAT WE DO AT LOCKDOWN, WE MAKE SURE THAT EVERY INMATE IS SECURED IN HIS CELL AND AFTER EVERY INMATE IS CONCEALED IN THEIR CELL, THE FLOOR OFFICER WILL DO A COMPLETE HEAD COUNT AND DURING HIS HEAD COUNT, HE MUST SEE FLESH. WHETHER IT'S JUST A HAND OR WHATEVER, BUT HE HAS TO SEE FLESH. HE TAKES HIS ROSTER WITH HIM AND HE GOES DOWN HIS ROSTER. HE GOES LIKE SAY,

FOR INSTANCE 3-A-1 AND THE ROSTER SAYS HE'S GOT THREE PEOPLE IN THERE. HE MAKES SURE HE'S GOT THREE PEOPLE IN THAT CELL AND HE DOES THAT CELL TO CELL UNTIL HE'S COMPLETELY DONE AND THEN HE CONFIRMS HIS COUNT THROUGH THE BOOKING OFFICER.

Q WHEN INMATES ARE NOT ON LOCKDOWN, DO THEY HAVE FREE MOVEMENT ALONG THE WINGS?

A THEY HAVE FREE MOVEMENT ALONG THE WING THAT THEY COME OUT OF AND THE DAY-ROOM.

Q SO YOU ARE SAYING THAT WHEN YOU LOCK THEM DOWN, THERE WOULD BE NO ONE MOVING ON THAT WING EXCEPT FOR CORRECTIONAL OFFICERS?

A THAT'S CORRECT.

[1697] Q ALL THE INMATES WOULD BE IN THEIR CELLS?

A THAT'S CORRECT.

Q AND THAT WOULD INCREASE YOUR SAFETY IN PERFORMING A SHAKEDOWN?

A THAT IS CORRECT.

Q NOW, YOU SAID THAT WHEN YOU GO IN ON A SHAKEDOWN, WHAT DO YOU DO?

A WHEN I CONDUCT A SHAKEDOWN, WE OPEN THE DOOR. WE ASK THE INMATES TO STEP OUT IN THE HALLWAY.

Q NOW, WHEN THE INMATES STEP OUT IN THE HALLWAY, WOULD THERE BE ANY OTHER INMATES WITH THEM?

A NO, SIR. JUST THE ONES IN THAT PARTICULAR ROOM.

Q AND WHEN YOU WENT TO SHAKEDOWN THE CELL ON THE THIRD FLOOR, A WING, 7 CELL, WHO WAS IN THAT ROOM? WAS WILLIAM ARTHUR KELLY IN THAT ROOM?

A YES, SIR.

Q WERE THERE ANY OTHER INMATES?

A TWO OTHER INMATES IN.

Q WHAT DID YOU DO WITH THEM WHEN YOU WENT IN THERE?

A FIRST OF ALL, WE ASKED THE INMATES TO STEP OUTSIDE. THEY COMPLIED WITH THE ORDER. THE INMATES WERE PATTED DOWN TO ENSURE THEY WERE NOT – HAVE ANY TYPE OF CONTRABAND ON THEIR BODY, ON THEIR PERSON.

Q WAS WILLIAM ARTHUR KELLY PATTED DOWN?

A YES, SIR, HE WAS

Q WAS ANYTHING FOUND ON HIM?

A NO, SIR.

Q WAS ANYTHING FOUND ON THE OTHER TWO INMATES?

A NO, SIR.

Q WHAT DID YOU DO ONCE YOU HAD PATTED DOWN THOSE INMATES?

A SAY THAT AGAIN, PLEASE?

Q WHAT DID YOU DO ONCE YOU HAD FINISHED PATTING DOWN THE INMATES?

A ONE OFFICER REMAINED IN THE HALLWAY WITH THE INMATES TO OBSERVE THEIR - EXCUSE ME, TO OBSERVE THEM. MYSELF AND ANOTHER OFFICER WENT INTO THE ROOM AND BEGIN TO DO A SEARCH OF THE CELL.

Q AND THIS IS A VERY THOROUGH SEARCH?

A THOROUGH SEARCH, YES, SIR.

Q WHAT DID YOU FIND WHEN YOU WERE IN THERE?

A WE FOUND ABOVE THE SECOND BUNK, TOP BUNK, SECOND BRICK TO THE RIGHT, THE FIRST BRICK DOWN FROM THE CEILING WHERE IT HAD BEEN TAMPERED WITH AND MORTAR HAD BEEN REMOVED AND TOILET PAPER HAD BEEN MOLDED AROUND THE BRICK TO APPEAR LIKE THE MORTAR WAS STILL THERE. HOWEVER, IT HAD BEEN COLORED GRAYISH-BLUE COLOR AND THAT WAS BROUGHT TO OUR ATTENTION IMMEDIATELY.

Q TELL ME WHAT CONDITION WAS THIS TISSUE PAPER IN WHEN YOU ACTUALLY - WHEN YOU ACTUALLY FELT IT?

[1699] A WHEN WE REMOVED IT, IT WAS DRY, SIR.

Q WHAT SHAPE WAS IT IN?

A IT WAS - IT WAS IN A SHAPE OF JUST LIKE A MORTAR THAT WOULD ACTUALLY GO AROUND A BRICK. IT WAS IN THAT SHAPE.

Q COULD IT HAVE BEEN REMOVED AND THEN PUT BACK IN AND RETAINED ITS SHAPE?

A YES, SIR. IT COULD BE REMOVED AND PUT BACK IN JUST LIKE A PUZZLE PUT TOGETHER.

Q DID YOU, IN FACT, REMOVE THAT TISSUE FROM AROUND THAT CINDER BLOCK?

A NOT ME MYSELF, SIR. I OBSERVED IT BEING REMOVED.

Q IT WAS DONE IN YOUR PRESENCE?

A YES, SIR.

Q ASK IF YOU CAN IDENTIFY THIS?

A YES, SIR. THAT'S THE TISSUE PAPER THAT WAS REMOVED FROM AROUND THE BLOCK.

Q THAT NIGHT, AUGUST THE 19TH OF 1998?

A YES, SIR.

Q FROM CELL 3-A-7?

A 3-A-7, YES, SIR.

Q THE CELL THAT WILLIAM ARTHUR KELLY WAS IN?

A THAT IS CORRECT.

Q AT THIS TIME, YOUR HONOR, WE WOULD MOVE THIS INTO EVIDENCE.

[1700] THE COURT: ANY OBJECTION?

MR. KIRKLAND: YOUR HONOR, WE WOULD OBJECT, BASED ON THE SAME REASON WE OBJECTED TO THIS LINE OF TESTIMONY.

THE COURT: OBJECTION IS OVERRULED. IT WILL BE ADMITTED AS STATE'S NUMBER 66.

MR. CHASE: THANK YOU, YOUR HONOR.

(WHEREUPON, STATE'S EXHIBIT NUMBER 66, ENVELOPE/TISSUE, ENTERED INTO EVIDENCE AT THIS TIME OVER OBJECTION OF COUNSEL.)

MR. CHASE: OFFICER GRANGER, WOULD YOU PLEASE STEP DOWN, HERE?

THE WITNESS: YES, SIR.

Q NOW, IF YOU WOULD, PLEASE, TAKE OUT A PIECE OF WHAT YOU DISCOVERED WAS AROUND THAT CINDER BLOCK THAT NIGHT AND SHOW THE JURY EXACTLY WHAT YOU ARE TALKING ABOUT?

A THIS IS TISSUE PAPER AND IT'S MADE TO LOOK LIKE MOLDING THAT WOULD GO AROUND THE CINDER BLOCK. AND WHEN IT'S PLACED UP ON THE WALL, IT WOULD APPEAR TO BE – IT WOULD FIT PERFECTLY INTO THE CRACK WHERE THE ORIGINAL MOLDING WAS – OR MORTAR.

Q WHAT ARE THE MARKINGS – WHAT'S THE MARKING ON THIS SIDE VERSUS ON THIS SIDE?

A THE COLORATION ON THE FRONT SIDE WOULD BE TO – TO TRY TO MAKE THIS APPEAR LIKE IT WAS THE MORTAR.

Q IN YOUR EXPERIENCE, HAVE YOU EVER SEEN – HAVE YOU [1701] EVER FOUND INMATES TO WRITE ON THE WALLS?

A YES, SIR.

Q HAVE A SEAT.

A (WITNESS COMPLIES).

Q OFFICER GRANGER, ONCE YOU HAD REMOVED THIS TISSUE THAT HAD REPLACED THE MORTAR AROUND THAT CINDER BLOCK IN 3-A-7, WHAT DID YOU FIND?

A WE FOUND THAT THE MORTAR THAT HAD BEEN REMOVED AND HAD BEEN COMPLETELY GOUGED OUT TO APPROXIMATELY THE DEPTH OF FOUR TO FIVE INCHES ON ONE SIDE AND HAD BEEN GOUGED OUT QUITE A BIT ALL THE WAY AROUND THE BLOCK.

Q NOW, THE MORTAR THAT SURROUNDS THOSE CINDER BLOCKS CAN THAT BE REMOVED WITH A FINGER?

A NO, SIR, I DON'T THINK SO.

Q IN YOUR OPINION, WOULD A TOOL HAD TO BE USED?

A YES, SIR, I THINK SO.

Q TO DO THE DAMAGE THAT WAS DONE IN THIS CASE?

A YES, SIR.

Q ASK YOU, OFFICER GRANGER, CAN YOU IDENTIFY THESE PHOTOS?

Q YES, SIR. YES, SIR, I CAN.

Q WHAT ARE THOSE?

A THOSE ARE THE PHOTOS WE TOOK THE NIGHT OF THE INCIDENT OF THE CINDER BLOCK.

Q AND THIS IS AFTER THE TISSUE HAD BEEN REMOVED OR [1702] BEFORE?

A AFTER, SIR.

Q AND THIS IS THE CONDITION THAT YOU FOUND IT THAT NIGHT?

A YES, SIR.

Q NOW, OBVIOUSLY, THESE PHOTOS WERE TAKEN LATER. IS IT STILL IN THE SAME CONDITION?

A YES, SIR.

Q DOES THAT FAIRLY AND ACCURATELY DEPICT -

A YES, SIR.

Q - HOW IT LOOKED THAT NIGHT?

A YES, SIR.

Q YOUR HONOR, AT THIS TIME, WE WOULD MOVE THESE INTO EVIDENCE.

MR. KIRKLAND: OBJECTION ON THE SAME GROUNDS AS THIS LINE OF TESTIMONY.

THE COURT: OBJECTION IS OVERRULED. IT WILL BE ADMITTED AS STATE'S 67 AND 68.

MR. CHASE: THANK YOU, YOUR HONOR.

(WHEREUPON, STATE'S EXHIBIT NUMBER 67 AND 68, PHOTOGRAPHS, ENTERED INTO EVIDENCE AT THIS TIME OVER OBJECTION OF COUNSEL.)

MR. CHASE: OFFICER GRANGER, IF YOU COULD, STEP DOWN ONE MORE TIME.

THE WITNESS: YES, SIR.

[1703] Q AND FIRST, ON THIS END, IF YOU WOULD PLEASE DESCRIBE WHERE THAT IS IN THE CELL AND EXPLAIN WHAT IT DEPICTS AND EXPLAIN WHAT YOU FOUND. MAKE SURE THE JURORS CAN SEE YOU AS YOU POINT THAT OUT.

A OKAY. AS YOU WALL THROUGH THE CELL, THIS WOULD BE THE BACK OF THE CELL. THIS WOULD BE THE LEFT-HAND CORNER. THIS WOULD BE THE SECOND BLOCK TO THE RIGHT, THE FIRST BLOCK DOWN FROM THE CEILING. AND THE DISCOLORATION HERE IS WHERE THE MORTAR WAS GOUGED OUT.

Q NOW, WHAT DOES THIS PICTURE DEPICT ALONG THESE JOINTS HERE BETWEEN THESE CINDER BLOCKS?

A IT LOOKS LIKE POSSIBLE MILDEW AND MORTAR.

Q STEP DOWN HERE AND SHOW THIS END OF THE JURY BOX.

A YES, SIR.

THIS HERE PICTURE DEPICTS THE BACK OF THE CELL. THIS WOULD BE THE LEFT-HAND CORNER, THIS WOULD BE THE SECOND BLOCK TO YOUR RIGHT, THE FIRST BLOCK FROM THE CEILING. AND THE DISCOLORATION IS WHERE THE MORTAR WAS REMOVED.

Q NOW, REFERRING TO THE STATE'S EXHIBIT NUMBER 67, IS THAT A CLOSER VIEW OF WHAT – OF THE DAMAGE THAT WAS DONE AROUND THAT CINDER BLOCK?

A YES, SIR.

Q PLEASE DESCRIBE TO THE JURY WHAT YOU FOUND THERE?

A OKAY. ON THIS SIDE HERE (INDICATES), THE BLOCK WAS [1704] GOUGED IN ABOUT – I WOULD SAY AROUND FOUR OR FIVE INCHES.

Q STEP DOWN AND GIVE THE OTHER JURORS AN OPPORTUNITY TO SEE THAT.

A YES, SIR.

THIS IS ON THE SIDE HERE WHERE THE GOUGE WAS AT, FOUR TO FIVE INCHES DEEP.

Q RETURN TO YOUR SEAT, OFFICER GRANGER.

A (WITNESS COMPLIES.)

Q ONCE YOU HAD FOUND THAT THE MORTAR AROUND THIS CINDER BLOCK HAD BEEN REMOVED, WHAT DID YOU DO?

A I TOOK – I PERSONALLY TOOK ONE INMATE AT A TIME DOWN TO THE SHOWER AND WE DID A STRIP SEARCH ON THEM TO MAKE SURE THEY WERE NOT HIDING THE OBJECT THAT WAS USED TO GOUGE THE MORTAR OUT BECAUSE WE COULD NOT FIND IT IN THE ROOM.

Q WERE ALL THREE INMATES SEARCHED?

A ALL THREE INMATES WERE SEARCHED THE SAME WAY, YES, SIR.

Q INCLUDING WILLIAM ARTHUR KELLY?

A YES, SIR.

Q WAS ANYTHING FOUND ON HIM?

A NO, SIR.

Q NOW, YOU SAID YOU DID A – CONTINUED WITH YOUR SEARCH OF THE ROOM?

A YES, SIR. WE CONTINUED TO SEARCH THE ROOM FOR THE OBJECT AND WHEN THAT WAS NOT FOUND, WE DID THE OTHER [1705] SEARCH.

Q YOU SAID IT WAS NOT FOUND IN THE ROOM?

A NO, SIR.

Q WERE YOU SURPRISED NOT TO FIND THAT?

A NO, SIR.

JACKIE D. GRANGER –
CROSS BY MR. KIRKLAND

* * *

[1710] Q OKAY. LET ME ASK YOU A COUPLE OF THINGS. HOW LONG HAVE YOU BEEN IN CORRECTIONS?

A FOUR AND A HALF YEARS, SIR.

Q AND YOU'VE BEEN AT LEXINGTON THE WHOLE TIME?

A YES, SIR.

Q SO YOU HAVE DEALT WITH INMATES WHEN THEY COME IN AND PLACED THEM IN CUSTODY AND THIS SORT OF THINGS?

A THAT'S CORRECT.

Q IS IT UNUSUAL FOR AN INMATE TO BE LOUD OR USE PROFANITY?

A UH – THERE ARE SOME THAT DO. THERE ARE SOME THAT DON'T.

Q WELL, I MEAN, IT'S NOT UNCOMMON, IS IT?

A NO, SIR.

Q I MEAN, WE ARE NOT TALKING ABOUT THE BEST PEOPLE IN SOCIETY ARE IN JAIL, ARE WE?

A THAT'S CORRECT.

[1711] **FELIX E. WILLIAMS –**
DIRECT BY MR. CHASE

* * *

FELIX E. WILLIAMS,

FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: STATE YOUR FULL NAME FOR THE RECORD. THE WITNESS: MY FULL NAME IS FELIX E. WILLIAMS, W-I-L-L-I-A-M-S.

DIRECT EXAMINATION

BY MR. CHASE:

Q CAPTAIN WILLIAM, WHERE DO YOU WORK?

A AT THE LEXINGTON COUNTY DETENTION CENTER.

Q WHAT POSITION DO YOU HOLD THERE?

A I'M THE JAIL ADMINISTRATOR.

Q WHAT DOES THE JAIL ADMINISTRATOR DO?

A BASICALLY, I OVERSEE THE DAILY OPERATIONS OF THE JAIL. WE HAVE FOUR SHIFTS AND MY BASIC FUNCTION IS TO MAKE SURE THAT EVERYTHING RUNS AS SMOOTH AS POSSIBLE.

[1712] Q HOW LONG HAVE YOU BEEN EMPLOYED AS THE ADMINISTRATOR?

A A LITTLE OVER A YEAR.

Q AND HOW LONG HAVE YOU BEEN EMPLOYED AT THE DETENTION CENTER?

A JUST ABOUT FIVE YEARS.

Q WHAT DID YOU DO PRIOR TO THAT TIME THAT YOU'VE BEEN HOLDING THE POSITION OF THE JAIL ADMINISTRATOR?

A I WAS A SHIFT SERGEANT. PRIOR TO THAT, I WAS A MASTER CORRECTIONAL OFFICER AND PRIOR TO THAT, I WAS A CORRECTIONAL OFFICER.

Q AS A SHIFT SERGEANT, WHAT WERE YOUR DUTIES?

A AS A SHIFT SERGEANT, BASICALLY I WAS RESPONSIBLE FOR THE SHIFT, NORMALLY AROUND TWELVE OR THIRTEEN PEOPLE, THE SAFETY AND SECURITY OF APPROXIMATELY ANYWHERE BETWEEN FOUR AND FIVE HUNDRED INMATES.

Q AND WHAT WERE YOUR DUTIES AS A MASTER CORRECTIONAL OFFICER?

A I OPERATED IN THE BOOKING AREA WHICH BASICALLY RECEIVES AND DISCHARGES THE INMATES AS WELL AS YOU ARE THE BACKUP FOR THE SERGEANT OF THE SHIFT.

Q AND WHAT WERE YOUR DUTIES AS A CORRECTIONAL OFFICER?

A BASICALLY, THE SAFETY AND SECURITY OF THE INMATES ASSIGNED TO THE FLOOR, THE ANNEX OR THE BOOKING AREA.

Q YOU'VE HELD JUST ABOUT EVERY POSITION AT THE LEXINGTON DETENTION CENTER THAT YOU CAN HOLD?

[1713] A YES, SIR, I HAVE.

Q I ASK YOU, AS A PART OF YOU [SIC] DUTIES AS THE JAIL ADMINISTRATOR, WERE YOU INVOLVED IN THE INVESTIGATION OF AN ATTEMPTED ESCAPE IN CELL 3-A-7?

A YES, SIR, I WAS.

Q CAN YOU PLEASE DESCRIBE WHAT WAS FOUND IN THAT CELL THAT INDICATED THERE WAS AN ATTEMPT TO ESCAPE?

A WELL, I ALWAYS GET THE REPORTS FIRST THING IN THE MORNING. IT'S LISTED ON OUR VOICE MAIL IN THE EVENINGS AND THEN IN THE MORNINGS, WE COME IN AND THE REPORTS ARE WRITTEN UP FOR US TO READ AND GO THROUGH. THAT MORNING I CAME ON ON THE 20TH, HAD BEEN TOLD OF TWO POSSIBLE ESCAPES THAT NIGHT. THERE WERE TWO FINDINGS. ONE ON THIRD FLOOR AND ONE ON FIRST FLOOR THAT THEY WENT LOOKING FOR. READ THE BASIC WHOLE PAPERWORK, DECIDED TO TALK TO THE INMATES INVOLVED OF WHICH I DID. INTERVIEWED ALL THREE OF THE PEOPLE IN THE CELL WHICH WAS MR. KELLY, MR. METTS AND MR. BLACK. I MADE A DETERMINATION THAT THERE HAD BEEN

AN ACTUAL ATTEMPT TO GET OUT OF THE JAIL AND AT THAT TIME, I PROCEEDED WITH CHARGING THEM WITH ATTEMPTED ESCAPE, MALICIOUS INJURY TO JAIL AND CONSPIRACY.

Q DID YOU ACTUALLY GO INTO CELL 3-A-7 THAT NIGHT?

A NOT THAT NIGHT. THE NEXT MORNING I DID.

Q WHAT DID YOU FIND IN THAT CELL?

A BASICALLY, ON THAT END OF THE JAIL, WHICH IS THE A [1714] WING, THERE'S BEEN SOME SETTLEMENT AND THERE ARE SOME BLOCKS THAT ARE CRACKED ALONG THE MORTAR AREAS LIKE YOU WOULD FIND IN ANY OTHER NORMAL CONCRETE BLOCK STRUCTURE. WHAT THEY – WHAT PEOPLE HAD DONE, HAD TAKEN AROUND THAT BLOCK AND CHISELED OUT THE MORTAR IN ORDER TO TRY TO BREAK OPEN A HOLE. THAT HOLE WOULD HAVE BEEN APPROXIMATELY EIGHT INCHES BY SIXTEEN INCHES.

Q WHAT WAS THE CONDITION – HOW WAS THAT TISSUE ATTEMPTED TO BE CONCEALED?

A THIS TISSUE WAS USED TO BASICALLY CONCEAL WHERE MORTAR HAD BEEN TAKEN OUT AROUND THE BLOCK?

A TISSUE IS A COMMON THING TO USE TO TRY TO HIDE THESE ATTEMPTED ESCAPES.

Q OFFICER WILLIAMS OR CHIEF WILLIAMS, DID YOU GO BACK INTO THAT CELL AND TAKE

MEASUREMENTS OF THE MORTAR THAT HAD BEEN REMOVED?

A YES, I HAVE BEEN BACK IN THAT CELL MANY TIMES.

Q IN FACT, DID YOU TAKE MEASUREMENTS OF THE DEPTH THAT THE DIGGING HAD GONE TO?

A YES, I DID. I TAKE – I TOOK BASICALLY AN EXTENDABLE RULER, PLACED IT INTO THE HOLE AND THEN TOOK PICTURES OF THAT.

Q AND YOU DID THAT YOURSELF?

A YES, SIR.

MR. KIRKLAND: OBJECTION, YOUR HONOR. THIS IS [1715] REPETITIVE. THERE'S BEEN TESTIMONY TO THE DEPTH.

THE COURT: OVERRULED.

MR. CHASE: DID YOU TAKE PHOTOGRAPHS OF THAT?

THE WITNESS: YES, I – WELL, I DID NOT TAKE THE PHOTOGRAPHS. I HAD THEM TAKEN.

Q AND YOU WERE ACTUALLY HOLDING THE RULER?

A YES.

Q ASK, CAN YOU IDENTIFY THESE?

A YES, THESE ARE 3-A-7. THIS IS BRICKS –

Q CAN YOU IDENTIFY WHAT IS IN THOSE PHOTOGRAPHS?

A BASICALLY, THE DEPTHS OF THE CHISELLING AROUND THE BLOCKS AS THE RULER SHOWS. IN SOME PLACES, IT'S UP TO FIVE INCHES DEEP.

Q NOW, ARE THESE THE ACTUAL PHOTOGRAPHS THAT WERE TAKEN AS YOU HELD THAT RULER THAT –

A NO. THE ACTUAL PHOTOGRAPHS ARE HERE. THOSE ARE BLOWUPS.

Q THESE ARE ENLARGEMENTS OF THOSE PHOTOGRAPHS?

A THAT'S CORRECT.

Q DOES IT FAIRLY AND ACCURATELY DEPICT THE MEASUREMENTS THAT YOU TOOK?

A YES, ABSOLUTELY.

Q FROM CELL 3-A-7?

A CORRECT.

Q AT THIS TIME, YOUR HONOR, WE WOULD MOVE THESE INTO [1716] EVIDENCE.

MR. KIRKLAND: OBJECTION. BASED ON THE SAME – OBJECTION TO ALL OF THIS TESTIMONY.

THE COURT: OBJECTION IS OVERRULED. IT WILL BE ADMITTED AS STATE'S 69, 70 AND 71.

MR. CHASE: THANK YOU, YOUR HONOR.

(WHEREUPON, STATE'S EXHIBIT NUMBER 69, 70 AND 71, PHOTOGRAPHS, ENTERED INTO EVIDENCE AT THIS TIME OVER OBJECTION OF COUNSEL.)

MR. CHASE: CAPTAIN WILLIAMS, IF YOU WOULD – CAPTAIN WILLIAMS, IF YOU WOULD, PLEASE STEP DOWN.

A (WITNESS COMPLIES.)

Q AND FIRST, REFERRING TO STATE'S EXHIBIT NUMBER 69, IF YOU COULD STAND DOWN AT THIS END OF THE JURY BOX AND EXPLAIN EXACTLY WHAT YOU MEASURED AND WHAT THAT PICTURE DEPICTS?

A THIS IS BASICALLY THE LOWER RIGHT-HAND CORNER WITH THE TAPE MEASURE STUCK INTO THE HOLE. WE WERE ALSO LOOKING FOR THE WIDTH AS WELL AS THE DEPTH OF HOW SOMEBODY HAD CHISELLED OUT AND THAT'S BASICALLY WHAT THAT'S A PICTURE OF.

Q AND EXACTLY – APPROXIMATELY, WHAT IS THE WIDTH ON –

A HALF AN INCH.

Q IF YOU COULD STEP DOWN HERE.

A OKAY.

[1717] Q GIVE THEM THE SAME OPPORTUNITY AND EXPLAIN WHAT THAT IS.

A BASICALLY SHOWING ONE HALF OF AN INCH AS FAR AS WIDTH GOES TO TRY TO CHISEL AROUND THAT BLOCK.

Q NOW, REFERRING TO STATE'S EXHIBIT NUMBER 70, COULD YOU PLEASE EXPLAIN WHAT THAT DEPICTS?

A THIS IS SHOWING THE DEPTH OF THE CARVING INSIDE, A PORTION AROUND A NORMAL CONCRETE BLOCK AND IT SHOWS FIVE INCHES DEEP.

Q STEP DOWN HERE AND IF YOU CAN EXPLAIN – AND EXPLAIN WHAT THAT DEPICTS.

A THE SAME THING. WE WERE LOOKING FOR DEPTH. THE RULER IS INSERTED IN. IT SHOWS FIVE INCHES DEEP HAS BEEN CARVED AROUND THAT BLOCK.

Q NOW, REFERRING TO STATE'S EXHIBIT NUMBER 71, WHAT ANGLE OF THE CELL DOES THIS DEPICT?

A THAT'S THE UPPER PART. BASICALLY YOU SEE RIGHT HERE (INDICATES), THIS IS A PART OF THE LOWER – I GUESS YOU WOULD SAY THE BOTTOM RIGHT-HAND CORNER OF THAT BLOCK. THE SAME THING SHOWING THE DEPTH OF THE PENETRATION THERE TO TRY TO GET AROUND THE BLOCK.

Q AND WHAT DOES THAT DEPICT THE DEPTH TO BE?

A ALMOST SIX INCHES.

Q YOU CAN STEP DOWN HERE. GIVE THE JURORS ON THIS END THE OPPORTUNITY TO SEE THAT.

[1718] A THIS IS THE SAME SORT OF PICTURE AS THE FIRST ONE THAT I SHOWED YOU, SHOWING SIX – ALMOST SIX INCHES DEEP IN THAT PART OF THE BLOCK.

Q GO AHEAD AND HAVE YOUR SEAT.

A (WITNESS COMPLIES.)

Q CAPTAIN WILLIAM, COULD YOU BRIEFLY DESCRIBE WHAT'S INVOLVED IN A SHAKEDOWN?

A YES. BASICALLY, A SHAKEDOWN, WE TRY TO TAKE AND COVER THE ENTIRE JAIL AT LEAST ONCE A MONTH, ALL THREE FLOORS, THE ANNEX AND THE WHOLE ROUTINE TO MAKE SURE THERE'S NO CONTRABAND IN THE JAIL. AND CONTRABAND BASICALLY CONSISTS OF ANYTHING AN INMATE IS NOT SUPPOSED TO HAVE. IT CAN BE ANYTHING FROM CLOTHING TO A WEAPON, A RAZOR BLADE, ANY SORT OF A DIGGING TOOL WHICH COULD BE A DOOR HANDLE. ANYTHING THAT COULD BE BROKEN OFF OF ANYTHING WITHIN THE JAIL AREA THAT THEY MIGHT HAVE GOTTEN TO, PIECE OF FENCE FROM THE OUTSIDE WHEN THEY GO ON OUTSIDE RECREATION. ANY OF THOSE KIND OF THINGS IS WHAT WE ARE LOOKING FOR.

WHAT HAPPENS IS WE DESIGNATE A FLOOR FOR OFFICERS TO COME IN. WE BRING OFFICERS IN OFF SHIFT, PLACE A PERSON IN CHARGE OF THEM AND THEY GO UPSTAIRS WITH A CART AND THEY START CELL BY CELL GOING DOWN THROUGH WHERE THEY TAKE THE INMATES OUT OF THE CELL.

AS M.C.O. GRANGER EXPLAINED, THE INMATES COME [1719] OUT. THEY ARE BASICALLY PATTED DOWN TO MAKE SURE THEY DON'T HAVE ANYTHING ON THEM PERSONALLY. SOMEBODY WATCHES THEM WHILE THE OTHER CELL IS BEING

SEARCHED. EVERYTHING IN THE CELL IS GONE THROUGH, LOOKED AT UNDERNEATH THE TOILET, UNDERNEATH THE MATTRESSES, IN THEIR GRAY PAILS, ANY PLACE AT ALL THAT ANYTHING COULD BE HIDDEN IN. THE VENTS, WHATEVER. IT'S A THOROUGH SEARCH JUST TO MAKE SURE THERE IS NO CONTRABAND IN THAT CELL.

Q ARE RECORDS KEPT THAT ARE KEPT IN YOUR CUSTODY OF WHEN SHAKEDOWNS ARE DONE FOR EACH CELL?

A YES, SIR.

Q AND WITH THOSE RECORDS IS IT NOTED WHETHER THERE WAS ANYTHING WRONG OR ANYTHING MISSING OR ANY CONTRABAND OR ANYTHING IN THAT CELL?

A THAT'S CORRECT. THE SUPERVISOR THAT'S DOING THAT SHAKEDOWN IS REQUIRED TO WRITE UP A REPORT THAT SAYS WHATEVER HE FOUND. IF IT WAS TEN EXTRA BLANKETS OR TWO SHANKS OR WHATEVER HE HAPPENED TO FIND DURING THAT SHAKEDOWN.

Q NOW, YOU OBVIOUSLY WENT AND INVESTIGATED CELL 3-A-7 ON AUGUST THE 19TH OF 1998, A MONTH AGO?

A THAT'S CORRECT.

Q WHEN HAD CELL 3-A-7 BEEN SHAKEN DOWN THROUGH THE NORMAL COURSE OF BUSINESS PRIOR TO THAT DAY?

A THE LAST ONE THAT WAS DONE FOR THE ENTIRE FACILITY [1720] WAS ON THE 6TH OF AUGUST.

Q OF THIS YEAR?

A THAT'S CORRECT.

Q WAS ANYTHING NOTED AS FAR AS ANY PROBLEMS IN THE CELL?

A NOTHING IN THAT CELL. NOTHING OTHER THAN JUST NORMAL TYPE OF THINGS, YOU KNOW, THAT HAD BEEN CONFISCATED.

Q NOW, PRIOR TO AUGUST THE 6TH OF THIS YEAR, WAS THAT CELL SHAKEN DOWN IN THE NORMAL COURSE OF BUSINESS AT THE DETENTION CENTER?

A YES, IT WAS.

Q AND WHEN WAS THAT?

A 15 MAY, '98.

Q WAS ANYTHING NOTED THERE THAT THERE WERE PROBLEMS WITH THAT CELL?

A NO, THERE WAS NOT. AND IF SOMETHING IS NOTED – AS FAR AS, LET'S SAY THERE WAS SOME CHISELLING GOING ON, THAT'S SORT OF AN IMMEDIATE NOTIFICATION. THE OFFICER DOING THE SHAKEDOWN AT NIGHT, YOU KNOW, IF HE JUST FOUND TEN BLANKETS AND LET'S SAY, SOME EXTRA SALT OR PEPPER OR SOMETHING LIKE THAT, THAT'S NOT ANYTHING TO GET DISTURBED OVER.

NOW, IF HE FOUND A CUTTING IN THE WALL, I WOULD HAVE BEEN IMMEDIATELY NOTIFIED.

Q CAPTAIN WILLIAMS, HOW MANY INMATES WERE IN CELL 3-A-7 WHEN THIS SHOOK DOWN TOOK PLACE ON AUGUST THE 19TH?

[1721] A THERE ARE THREE.

Q AND HOW LARGE WAS THAT CELL?

A THAT CELL IS EIGHT BY TWELVE FEET.

Q IT'S EIGHT BY TWELVE OR EIGHT BY TEN?

A EIGHT BY TWELVE, SIR. EIGHT BY TWELVE, YES, SIR.

Q NOW, AS A PART OF YOUR PREPARATION FOR YOUR TESTIMONY HERE TODAY, DID I ASK YOU TO COME IN THE COURTROOM AND TAKE MEASUREMENTS?

A YES, SIR, YOU DID.

Q IF YOU COULD STEP DOWN?

A (WITNESS COMPLIES.)

Q FROM THE WALL BEHIND THOSE JURORS OUT TO THIS POINT, ABOUT HOW FAR IS THAT?

A ABOUT SEVEN AND A HALF FEET.

Q SO WHERE WOULD EIGHT FEET BE?

A RIGHT ABOUT HERE (INDICATES).

Q AND IF YOU WOULD, TAKE THIS INTO YOUR HANDS?

A (WITNESS COMPLIES.)

Q AND SHOW THE LENGTH THAT THAT CELL WOULD BE?

A BE RIGHT HERE (INDICATES).

Q SO THAT WOULD BE THE SIZE OF THE CELL THAT THOSE THREE INMATES WERE IN?

A YES, SIR, EIGHT BY TWELVE.

Q FROM THIS POINT, THAT'S THE WALL BEHIND THE JURORS, FROM THIS POINT –

[1722] A TO RIGHT HERE (INDICATES).

Q – DOWN TO RIGHT THERE (INDICATES)?

A THAT'S CORRECT.

Q THANK YOU.

CAPTAIN WILLIAMS, YOU WERE ALSO ASKED TO RESEARCH IN YOUR RECORDS TO SEE HOW LONG PRIOR TO AUGUST THE 19TH, 1998, WILLIAM ARTHUR KELLY HAD BEEN IN CELL 3-A-7?

A YES, SIR.

Q WHEN WAS HE ACTUALLY MOVED INTO THAT CELL?

A MR. KELLY WAS MOVED IN THAT CELL ON THE 26TH DAY OF APRIL OF '98.

Q SOME SIX MONTHS PRIOR ALMOST?

A YES, SIR.

Q IF I COULD ASK YOU THIS. WHEN YOU ARE AT THE CINDER BLOCK IN CELL 3-A-7 ON THAT

REAR WALL WHERE THAT MORTAR HAD BEEN REMOVED, WHAT'S BEHIND THAT WALL?

A THERE'S A SLIGHT LAYER OF MORTAR AND THEN A RED TILE THAT BASICALLY COVERS THE WHOLE BUILDING FROM THE OUTSIDE, A DECORATIVE TILE.

Q HOW FAR IS IT FROM THE INSIDE OF THAT WALL TO THE EXTERIOR OF THAT RED TILE THAT YOU HAVE JUST DESCRIBED?

A APPROXIMATELY NINE INCHES. YOUR CONCRETE BLOCK IS EIGHT. THERE'S A FINE LAYER OF MORTAR AND THEN THE RED BRICK IS STUCK TO THE OUTSIDE OF THAT WHICH IS APPROXIMATELY AN INCH.

[1723] Q AND APPROXIMATELY HOW FAR WERE SOME OF THE DIGGINGS ON THE MORTAR IN THIS CASE?

A SIX INCHES.

Q OVER TWO-THIRDS OF THE WAY THROUGH THAT WALL?

A YES, SIR.

Q CAPTAIN WILLIAMS, WHAT'S OUTSIDE THAT WALL? IF YOU REMOVE THAT BRICK OR THAT CINDER BLOCK, WHAT'S ON THE OTHER SIDE OF THAT WALL?

A THE RECREATIONAL YARD.

Q AND THAT'S IN THE OUT DOOR – YOU ARE OUTSIDE THAT BUILDING?

A YOU ARE OUTSIDE THE BUILDING AT THAT TIME, YES, SIR.

Q THANK YOU.

[1728] **FELIX E. WILLIAMS – CROSS BY MR. KIRKLAND**

* * *

Q OKAY. SO WE CAN KIND OF REFRESH. AND YOU WOULD AGREE WITH ME THERE'S SORT OF A CODE AMONGST INMATES ABOUT TELLING ON OTHER INMATES, ISN'T THERE?

A THERE IS.

Q AND IF YOU WERE TO TELL ON ANOTHER INMATE – WELL, LET ME BACK UP A LITTLE BIT. LET ME SORT OF SEE IF CAN SORT OF PAINT THIS PICTURE. WE ARE TALKING ABOUT THE THIRD FLOOR, CORRECT?

A THIRD FLOOR.

[1729] Q HOW MANY INMATES ON THAT FLOOR?

A 102.

Q 102. AND IS IT ABOUT THREE PER CELL, SOMETIMES MORE?

A THERE IS ALWAYS THREE PER CELL.

Q OKAY. AND IF AN INMATE IN YOUR EXPERIENCE WERE TO TELL ON ANOTHER INMATE FOR

SOMETHING THEY WERE DOING, WHAT HAVE YOU EVER NOTICED HAPPENING TO AN INMATE?

A WE BASICALLY MOVE THAT INMATE MOST OF THE TIME.

Q AND WHY DO YOU DO THAT?

A TO AVOID A PROBLEM.

Q WHY DO YOU DO THAT?

A TO AVOID A PROBLEM.

AND WHAT KIND OF PROBLEM ARE WE TALKING ABOUT?

A BUT IT DOES HAPPEN. THE INMATE MAY BE HURT. ANY NUMBER OF THINGS THAT CAN HAPPEN. HE MAY BE CHASTISED, BUT THAT'S - YOU KNOW, THAT HAPPENS QUITE OFTEN.

Q SO INMATES BASICALLY KNOW IF THEY WANT TO STAY IN GOOD GRACES, THEY KEEP THEIR MOUTHS SHUT, DON'T THEY?

A NO, I WOULD DISAGREE WITH THAT.

Q THEY WANT TO STAY IN GOOD GRACES WITH THE OTHER INMATES?

A I'D STILL DISAGREE WITH THAT. I HAVE INMATES THAT WRITE ME, TALK TO ME, AS WELL AS TO MY OFFICERS ALL THE TIME ABOUT A PROBLEM.

AS A MATTER OF FACT, THE LAST ESCAPE ATTEMPT WAS [1730] BROUGHT TO OUR ATTENTION BY ANOTHER INMATE.

Q NOW - AND THAT MAY - I BELIEVE YOU THAT SOME INMATES DO COMMUNICATE WITH YOU, BUT YOU STILL WOULD AGREE THAT IF AN INMATE DOES BRING SOMETHING OR RATS ANOTHER INMATE OUT, THERE COULD BE RETRIBUTION IN THAT?

A THERE COULD BE.

Q IT'S NOT UNCOMMON?

A YES, THERE COULD BE?

[1733] **MATTHEW MCCORMACK - DIRECT BY MR. HUMPHRIES**

* * *

THE WITNESS: MY NAME IS MATTHEW MCCORMACK. LAST NAME M-C-C-O-R-M-A-C-K.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q MR. MCCORMACK, I THINK YOU'RE FIND IF YOU KEEP YOUR VOICE UP, BUT STAY SEATED BACK, THIS JURY WILL BE ABLE TO HEAR YOU. YOU JUST NEED TO KEEP YOUR VOICE UP.

A ALL RIGHT.

Q MR. MCCORMACK, YOU ARE WEARING AN ORANGE JUMPSUIT. WHERE DO YOU PRESENTLY RESIDE?

A RIGHT NOW I'M AT THE LEXINGTON COUNTY DETENTION CENTER.

Q WHERE IS YOUR MORE PERMANENT RESIDENCE?

A I'M AT A FEDERAL INSTITUTION IN PETERSBURG, VIRGINIA.

Q ARE YOU PRESENTLY SERVING A FEDERAL SENTENCE IN THAT INSTITUTION?

A YES, SIR.

Q DO YOU HAVE ANY PENDING CHARGES, EITHER STATE OR [1734] FEDERAL, TO YOUR KNOWLEDGE?

A NO, SIR.

Q YOUR PRESENCE HERE TODAY, WAS IT VOLUNTARY?

A YES.

Q WERE YOU BROUGHT HERE BY A FEDERAL WRIT TO TESTIFY?

A YES.

Q LET'S DISCUSS THIS. IN RETURN FOR YOUR TESTIMONY TODAY, WHAT, IF ANYTHING, HAS THE ELEVENTH CIRCUIT SOLICITOR'S OFFICE OR ANY AGENCY, LAW ENFORCEMENT AGENCY IN THE JURISDICTION PROMISED YOU FOR YOUR TESTIMONY?

A I HAVE RECEIVED NO PROMISES.

Q WHAT INSTRUCTIONS HAVE YOU RECEIVED FROM THIS OFFICE REGARDING YOUR TESTIMONY TODAY?

A BASICALLY, TO TELL ABOUT MY CORRESPONDENCE WITH MR. KELLY.

Q MR. MCCORMACK, DID YOU HAVE AN OCCASION TO BE HOUSED OR CELLED WITH THE DEFENDANT, WILLIAM ARTHUR KELLY, IN THE LEXINGTON COUNTY DETENTION CENTER?

A YES, SIR.

Q AND FOR A PERIOD OF APPROXIMATELY HOW LONG?

A IT WAS ON TWO SEPARATE OCCASIONS. APPROXIMATELY SIX MONTHS ALTOGETHER.

Q NOW, WE HAVE HAD PREVIOUS TESTIMONY REGARDING THE CELLS, THEIR APPROXIMATE DIMENSIONS. ARE THESE LARGE CELLS OR SMALL CELLS?

[1735] A FAIRLY SMALL. I GUESS SIX BY NINE.

Q YOUR RELATIONSHIP THEN WITH MR. KELLY, IT WAS – YOU ARE PRETTY CLOSE IN PHYSICAL PROXIMITY, HOW DID YOU GET ALONG OTHERWISE?

A PRETTY GOOD, PRETTY GOOD.

Q DID YOU AND THE DEFENDANT KELLY ENGAGE IN CONVERSATION ON A REGULAR BASIS?

A YES.

Q DID YOU HAVE A LOT OF OPPORTUNITY TO DO THAT?

A YES.

Q DID THERE COME A TIME OR A NUMBER OF TIMES THAT THE DEFENDANT KELLY TALKED TO YOU ABOUT HIS PENDING CHARGES OR THEY WERE PENDING AT THAT TIME?

A YES, SIR.

Q MR. MCCORMACK, TELL THIS JURY WHAT WILLIAM ARTHUR KELLY TOLD YOU REGARDING THE INCIDENT ON MAY 5TH 1996; THAT IS, THE STABBING AND KILLING OF SHIRLEY SHEALY?

A OKAY. WELL, FIRST OF ALL, HE – MR. KELLY TOLD ME THAT HE HAD WORKED SOMETIME AT KENTUCKY FRIED CHICKEN AND –

MR. KIRKLAND: COULD WE ASK HIM TO SPEAK UP, PLEASE?

THE COURT: IF YOU WOULD, SPEAK UP JUST A LITTLE BIT, PLEASE. IF YOU'LL JUST SPEAK IN A LOUDER VOICE, THE MICROPHONE WILL PICK YOU UP.

[1736] THE WITNESS: ALL RIGHT.

I WAS SAYING ME AND – MR. KELLY TOLD ME THAT HE WORKED AT KENTUCKY FRIED CHICKEN FOR QUITE SOME TIME WITH THIS LADY AND – WHICH WAS THE MANAGER. AND HE TOLD ME THAT THEY HAD NOT A RELATIONSHIP – NOT A PREVIOUS RELATIONSHIP BUT SOMETHING TO

THAT EXTENT TO WHERE, I GUESS, SHE MIGHT HAVE LIKED HIM AT ONE TIME, BUT IT WASN'T – IT WASN'T MUTUAL ON HIS SIDE. AND THEY – HE TOLD – MR. KELLY TOLD ME THAT THEY HAD PLANNED TO STAGE A ROBBERY AT THIS – AT KENTUCKY FRIED CHICKEN.

Q HE AND THE MANAGER?

A YES. AND TOLD ME THAT THEY PLANNED THIS ROBBERY SO THAT HE WOULD COME, TAKE THE MONEY AND THEN FLEE WHILE THIS LADY CALLED THE POLICE AND, YOU KNOW, TOLD THAT THERE WAS A ROBBERY.

Q WHAT ELSE DID HE TELL YOU?

A AFTER THAT, HE TOLD ME HE WENT – WELL, DURING THIS ROBBERY, HE WENT AND RETRIEVED THE MONEY AND WHEN HE – ON HIS WAY LEAVING, HE WENT BACK FOR SOME REASON AND, I GUESS, HE OVERHEARD THIS LADY ON THE TELEPHONE AND SHE WAS HAVING A CONVERSATION TO WHERE HE GOT THE POINT ACROSS THAT SHE WAS TURNING ON HIM. SHE WAS, YOU KNOW, TURNING HIM IN, YOU KNOW, FOR TAKING THE MONEY AND YOU KNOW NOT SAYING THAT SHE HAD ANYTHING TO DO WITH IT, YOU KNOW. AND SO, BEST I CAN REMEMBER, HE TOLD ME THEN AND THAT'S WHEN HE WENT AND [1737] RETRIEVED A KNIFE THAT BELONGED TO HIM. HE TOLD ME HE HAD COLLECTED CERTAIN TYPES OF KNIVES.

Q HE SAID HE COLLECTED CERTAIN KNIVES?

A YES, SIR.

Q DID HE DESCRIBE THIS PARTICULAR KNIFE?

A HE JUST – THE WAY HE DESCRIBED IT TO ME WAS SORT OF LIKE A BOWING KNIFE, LIKE A, YOU KNOW, SORT OF A HUNTING KNIFE.

Q DID HE DESCRIBE ANYTHING ABOUT THE CHARACTERISTICS OR THE WAY THE KNIFE WAS MADE?

A HE TOLD ME THAT THERE WAS A BLADE SIDE TO THE KNIFE AND ALSO A SIDE WITH SORT OF LIKE A SAW.

Q SHOW YOU STATE'S EXHIBIT NUMBER 43. IS THAT CONSISTENT WITH THE DESCRIPTION HE GAVE YOU REGARDING THE BLADE PARTICULARLY? THE SAWED EDGE AND THE BLADE EDGE?

A YES, SIR.

Q WHAT ELSE DID HE TELL YOU.

A HE TOLD ME RIGHT THEN AND THERE THAT WHEN HE OVERHEARD THIS CONVERSATION THIS IS WHEN HE WENT AND GOT THE KNIFE AND HE CAME BACK AND, I GUESS, THIS LADY SAW HIM COMING IN AT THIS POINT AND SHE HAD KNOWN THAT HE OVERHEARD THE CONVERSATION, I GUESS, BECAUSE MAYBE SHE SAW THE KNIFE IN HIS HAND, BUT SHE REMAINED SEATED IN THE CHAIR. AND AT THAT POINT, MR. KELLY POSITIONED HIMSELF BEHIND THIS LADY AND CUT HER THROAT.

[1738] Q DID HE DESCRIBE TO YOU – IN FACT, DID HE SHOW YOU THE MANNER IN WHICH HE CUT HER THROAT?

A YES, SIR. HE SAID THAT HE CUT HER THROAT ONE TIME AND THAT SHE – IT DIDN'T KILL HER AUTOMATICALLY, SO HE SORT OF TURNED THE KNIFE AROUND TO THE SAWED PART AND MADE A SAWING MOTION. LITERALLY, YOU KNOW, TRYING TO DECAPITATE THIS WOMAN.

Q CUT HER HEAD OFF?

A YES.

Q WHAT ELSE DID HE TELL YOU?

A AT THAT POINT, HE SAID THAT HE TURNED TO LEAVE OUT OF, I GUESS, THE OFFICE OF THIS ESTABLISHMENT AND HE RECOGNIZED AN OFFICER, A POLICE OFFICER COMING THROUGH THE FRONT DOOR OF KENTUCKY FRIED CHICKEN. WHEN HE SEEN THIS POLICE OFFICER, THE POLICE OFFICER – HE SAID THE POLICE OFFICER DIDN'T SEE HIM AND DIDN'T KNOW THAT HE WAS PRESENT. AND SO MR. KELLY SAID THEN THAT HE JUMPED OUT OF THE – THE DRIVE-THRU WINDOW OF THIS ESTABLISHMENT.

Q DID HE SAY WHERE HE WENT AFTER HE GOT OUT OF THE DRIVE-THRU WINDOW?

A TO MY KNOWLEDGE, HE TOLD ME THAT HE WENT STRAIGHT TO HIS CAR.

Q DID HE INDICATE TO YOU WHERE HIS CAR WAS PARKED?

A I BELIEVE IT WAS BEHIND THE KENTUCKY FRIED CHICKEN NEXT TO A DUMPSTER OR SOMETHING.

[1739] Q A DUMPSTER?

A YES.

Q DID HE TELL YOU WHAT HE DID AFTER HE WENT THROUGH THE DRIVE-THRU WINDOW AND TO HIS CAR?

A HE SAID THEN THAT HE PROCEEDED TO LEAVE – LEAVE TOWN AND THAT HE WENT TO SOUTH OF THE BORDER WHICH IS – I'M PRETTY SURE Y'ALL ARE FAMILIAR WITH WHAT THAT IS. HE SAID THAT HE SPENT THE NIGHT IN A HOTEL AT SOUTH OF THE BORDER AND FROM WHAT I GATHERED, HE TOLD ME HE ONLY SPENT ONE NIGHT AT SOUTH OF THE BORDER AND THEN THE DAY AFTER, HE DROVE STRAIGHT TO A RELATIVE'S HOUSE IN MASSACHUSETTS.

Q NOW, WAS THAT THE ONLY TIME YOU AND MR. KELLY DISCUSSED THAT PARTICULAR INCIDENT?

A NO.

Q HOW FREQUENTLY WOULD YOU SAY, MR. MCCORMACK, DID MR. KELLY DISCUSS THAT INCIDENT AND HIS INVOLVEMENT IN THAT INCIDENT?

A UH – INFREQUENTLY. YOU KNOW, SITTING IN THE CELL TOGETHER FOR SUCH A LONG TIME, I – YOU KNOW, WE RUN OUT OF THINGS TO TALK ABOUT AND SO SOMETIMES HE WOULD START TALKING ABOUT THE INCIDENT. SO WE TALKED ABOUT IT PRETTY MUCH VERY MUCH TO WHERE, YOU KNOW, I GATHERED ALL THIS INFORMATION,

YOU KNOW, AND WAS ABLE TO REMEMBER, YOU KNOW, IT THE WAY HE TOLD ME.

Q MR. MCCORMACK, DID YOU TALK ABOUT ANYTHING ELSE THAT [1740] YOU THOUGHT SIGNIFICANT WHILE IN THE CELL?

A AS FAR AS –

Q WHAT ABOUT JAIL LIFE? DID YOU TALK ABOUT JAIL LIFE?

A YES. YES. I WAS – I'VE BEEN IN AND OUT OF PRISON SINCE I'VE BEEN 17-YEARS-OLD AND HE KNOWS THIS AND HE SORT OF CONFIDED IN ME OVER THIS BECAUSE HE KNEW – HE KNEW THAT HE WOULD MOST LIKELY END UP DOING A GOOD, YOU KNOW, PART OF THE REST OF HIS LIFE –

MR. KIRKLAND: YOUR HONOR, I'M HAVING A HARD TIME HEARING.

THE COURT: IF YOU WOULD, SPEAK UP JUST A LITTLE BIT LOUDER, PLEASE, MR. MCCORMACK.

THE WITNESS: HE SAID THAT HE —NO, HE KNEW THAT HE WOULD BE DOING PRETTY MUCH THE REST OF HIS LIFE IN PRISON, SO HE CONFIDED IN ME AND PRETTY MUCH WANTED TO KNOW HOW PRISON LIFE WAS, HOW HE SHOULD CARRY HIMSELF. YOU KNOW, WANTED TO KNOW HOW LIFE WAS IN GENERAL IN A VIOLENT PRISON POPULATION.

Q LET ME ASK YOU THIS. DID YOU ACT ALONG THE LINES OF A MENTOR FOR MR. KELLY?

A YES, SIR. THAT'S WHAT –

Q IN THAT REGARD?

A YES, YES.

Q WELL, LET ME ASK YOU THIS. YOU ARE IN THE CELL PRETTY MUCH SEVEN-TWENTY-FOUR –

[1741] A YES.

Q – GIVE OR TAKE A FEW HOURS?

A YES.

Q DID YOU EVER TALK ABOUT ESCAPE?

A YES, WE DID.

Q WELL, LET ME ASK YOU THIS. NOW, IS THAT AN UNUSUAL TOPIC FOR INMATES THAT ARE CONFINED IN THAT MANNER TO TALK ABOUT?

A NO, NOT REALLY.

Q IS IT, HOWEVER, UNUSUAL FOR AN INMATE TO TAKE ACTIONS TO PUT AN ESCAPE PLAN INTO PLACE?

A IT'S –

Q MORE UNUSUAL THAN JUST TALKING?

A YES, YES, YES.

Q ABOUT HOW OFTEN DID MR. KELLY TALK ABOUT ESCAPING?

A UH – I WOULD SAY MAYBE – MAYBE FIVE TIMES. I – YOU KNOW, I CAN'T BE SURE EXACTLY HOW MANY TIMES, BUT IT WAS BROUGHT UP AT LEAST FIVE TIMES.

Q WELL, NOW, LET ME ASK YOU THIS. MR. MCCORMACK, HE WASN'T THE ONLY ONE ENGAGING IN THIS CONVERSATION, WAS HE?

A NO.

Q YOU WERE ENGAGING IN THE CONVERSATION AS WELL?

A YES, YES.

Q IN FACT, ISN'T IT TRUE THAT SOMETIMES BOTH OF YOU SORT OF PUT YOUR HEADS TOGETHER TO FIGURE OUT WHAT A GOOD [1742] ESCAPE PLAN MIGHT BE?

A YES.

Q NOW, THERE'S SOME TALK ABOUT ESCAPE. TELL THIS JURY IF WILLIAM ARTHUR KELLY EVER PUT ONE OF THOSE PLANS INTO ACTION?

A SOMEWHAT, YES.

Q TELL THE JURY ABOUT IT.

A MR. KELLY, HE MADE A SHANK ONE DAY AND THIS WAS – THIS IS A HOMEMADE KNIFE THAT HE MADE OUT OF A TOOTHBRUSH THAT HE SHARPENED UP ON ONE END.

Q WELL, LET ME ASK YOU THIS. YOU SAID HE MADE IT. DID YOU OBSERVE HIM MAKING THIS?

A YES.

Q HOW DID HE – IN WHAT MANNER DID HE MAKE THIS SHANK, AS YOU CALL IT?

A HE MADE IT SCRAPPING [sic] IT AGAINST CONCRETE IN ORDER FOR THE PLASTIC, YOU KNOW, TO SHARPEN ON THE TOOTHBRUSH.

Q WHILE WE ARE ON THE SUBJECT OF SHANKS, YOU ROOMED YOU SAID FOR A TOTAL OF ABOUT SIX MONTHS WITH MR. KELLY –

A YES, SIR.

Q – OVER THE COURSE OF TWO DIFFERENT TIMES, IS THAT RIGHT?

A YES.

Q IS THIS SHANK THE ONE THAT YOU DESCRIBED FOR THE JURY ON THAT INCIDENT THE ONLY SHANK THAT YOU OBSERVED IN THE [1743] POSSESSION OF WILLIAM ARTHUR KELLY?

A UH – AS FAR AS I KNOW. BECAUSE THERE WAS MORE THAN ONE THAT WAS MADE BECAUSE YOU CAN EASILY BUY A TOOTHBRUSH AND SCRAPE IT AND MAKE A SHANK.

Q OKAY. SO IT WASN'T THE ONLY ONE, BUT IT WAS ONE OF THEM?

A YEAH, TRUE. YES, YES.

Q OKAY. ALL RIGHT. PLEASE CONTINUE. I'M SORRY I INTERRUPTED YOU.

A OKAY. WE HAD AN OFFICER WORKING IN THE JAIL AT THAT TIME AND –

Q DO YOU RECALL HER NAME?

A HER NAME WAS MS. PRICE, MARSHA PRICE.

Q SHE WAS A CORRECTIONAL OFFICER?

A YES, SIR.

Q DESCRIBE HER STATUTE. THAT IS, HOW TALL SHE WAS, ABOUT HOW MUCH SHE MIGHT HAVE WEIGHED. TRY AND BE KIND.

A SHE WAS ABOUT APPROXIMATELY FIVE FOOT SEVEN, MAYBE A 130 POUNDS MAYBE.

Q OKAY. TELL THE JURY A LITTLE BIT ABOUT MS. PRICE AND HOW SHE WAS REGARDED BY YOU AND BY MR. KELLY IF YOU KNOW.

A SHE WAS REGARDED BY JUST ABOUT EVERY INMATE, INCLUDING MYSELF, TO BE A PUSHOVER IN THIS JAIL BECAUSE SHE WAS REALLY EASY TO GET OVER ON. IF ANYONE WOULD TRY TO ESCAPE, SHE WOULD BE THE MOST LIKELY PERSON TO TRY IT WITH, [1744] TO TRY TO TAKE HOSTAGE, THE MOST LIKELY PERSON.

Q TELL THE JURY ABOUT THAT EVENING.

A OKAY. ME AND MR. KELLY WERE IN THE ROOM THIS NIGHT AND HE HAD GOT FINISHED MAKING THIS SHANK OUT OF THIS TOOTHBRUSH AND WE WERE TALKING ABOUT DIFFERENT WAYS TO ESCAPE AND MR. KELLY WAS GOING THROUGH ONE OF HIS – ONE OF HIS PERIODS WHERE – ONE OF HIS PERIODS WHERE HE DIDN'T WANT TO BE IN THE CELL, YOU KNOW. SO, HE MADE A PLAN TO CALL MS. PRICE TO THE DOOR AND TAKE MS. PRICE HOSTAGE WITH THIS SHANK.

HE CALLED MS. PRICE TO THE DOOR AND MS. PRICE CAME TO THE DOOR. SHE OPENED THE DOOR AND MR. KELLY STOOD NEXT TO THE DOOR WITH THE SHANK OUT OF VIEW SO SHE COULDN'T SEE IT.

Q WAS IT IN HIS HAND?

A YES. AND HE THEN PROCEEDED TO STALL. HE ASKED HER – I DON'T KNOW MAYBE FOR SOME REGULAR THINGS WE ASK FOR. TOILET PAPER, TYLENOL, SOMETHING IN THAT NATURE. I COULDN'T REALLY HEAR. BUT SHE ENDED UP – SHE ENDED UP LEAVING AND HE ENDED UP BACKING OUT OF DOING IT AND THAT WAS PRETTY MUCH THE END OF IT.

Q NOW, TELL THE JURY WHAT YOU WERE DOING WHEN HE WAS STANDING THERE WITH A SHANK IN HIS HAND BEHIND THE DOOR?

A I WAS LAYING IN THE BUNK OR MY MATTRESS. WE HAVE BUNK BEDS IN THE ROOM AND IT WAS ONLY ME AND KELLY, BUT I [1745] CHOSE TO SLEEP ON THE FLOOR BECAUSE IT – YOU KNOW, WITH MY MATTRESS BECAUSE IT'S A LOT COOLER ON THE FLOOR AND IT'S A PART OF THE FLOOR WHERE THE AIR CONDITIONER HITS AND IT GETS VERY STUFFY WITHOUT ANY VENTILATION IN THAT ROOM HARDLY. AND SO I WAS LAYING THERE ON THE FLOOR ON THE MATTRESS WITH A CROSSWORD PUZZLE BOOK THAT BELONGED TO MR. KELLY AND I WAS JUST LOOKING AT HIM THE WHOLE TIME FROM HIS BACK SIDE THAT HE WAS DOING THIS.

Q WELL, NOW, MR. MCCORMACK, YOU DIDN'T ATTEMPT TO STOP DEFENDANT KELLY?

A I DIDN'T ATTEMPT TO STOP HIM, BUT I – WHAT WAS GOING THROUGH MY MIND IS THAT, YOU KNOW HOW WOULD THIS LOOK ON ME IF HE DID SOMETHING LIKE THAT AND WOULD I BE IMPLICATED AND I CLEARLY DIDN'T NEED THAT AT THIS TIME BECAUSE I WAS ON A STATE WRIT – I MEAN I WAS ON A FEDERAL WRIT HERE TO TESTIFY ON AN INCIDENT THAT HAPPENED REGARDING AN OFFICER BEING TAKEN HOSTAGE.

SO IF MR. KELLY WOULD HAVE DONE THAT, IT WOULDN'T HAVE LOOKED VERY GOOD ON MY PART. SOME EYEBROWS WOULD HAVE BEEN RAISED.

SO I CONTEMPLATED WHAT I SHOULD DO. YOU KNOW, SHOULD I TRY TO – SHOULD I TRY TO GRAB HIM AND STOP HIM FROM DOING THIS, BUT, YOU KNOW, I THOUGHT ABOUT IT AND I, LIKE I TOLD YOU, MR. KELLY HAD CONFIDED IN ME AND I PRETTY MUCH FELT LIKE HIS MENTOR AND I TOLD HIM AND TOLD HIM THAT [1746] IT WOULDN'T WORK. HE WOULDN'T BE ABLE TO GET FAR AND IT WOULD JUST, YOU KNOW, MAKE THINGS WORSE ON HIMSELF.

Q YOU DIDN'T NECESSARILY TELL HIM NOT TO ATTEMPT TO ESCAPE. YOU TOLD HIM THAT THAT PARTICULAR PLAN WAS NOT A GOOD ONE?

A THAT'S RIGHT.

Q NOW, MR. MCCORMACK, WITHOUT TRYING TO BE REAL FLIPPANT, IF I WERE TO CHARACTERIZE

YOUR PRIOR RECORD, YOUR PRIOR CRIMINAL RECORD AND I SAID IT WAS AS LONG AS BOTH OF YOUR TATTOOED ARMS, THAT WOULD BE A PRETTY FAIR STATEMENT, WOULDN'T IT?

A YES, YES.

Q THIS INFORMATION YOU PROVIDED TO THE JURY TODAY, DID I TELL YOU ABOUT IT OR DID YOU TELL ME ABOUT IT?

A I TOLD YOU TODAY.

Q WHAT DID I TELL YOU THAT I ABSOLUTELY REQUIRED REGARDING YOUR TESTIMONY TO THIS JURY TODAY?

A UH – EXCUSE ME?

Q DID I TELL YOU TO TELL THE TRUTH TO THIS JURY –

A OF COURSE.

MR. KIRKLAND: OBJECTION, YOUR HONOR. I DON'T THINK THAT'S A PROPER QUESTION. BOLSTERING HIS TESTIMONY, MAKING HIMSELF A WITNESS.

THE COURT: OVERRULED.

MR. HUMPHRIES: WHAT DID I TELL YOU REGARDING [1747] YOUR TESTIMONY TO THIS JURY TODAY? THE ONLY THING THE STATE WANTED FROM YOUR TESTIMONY WAS WHAT?

THE WITNESS: THE TRUTH.

Q MR. MCCORMACK, I'VE GOT ONE OTHER THING. DEFENDANT KELLY HE USED TO CARRY A

CUP AROUND WITH HIM IN THE DETENTION CENTER?

A YES, SIR.

Q DID YOU EVER GET A REAL GOOD LOOK AT THAT CUP?

A YES, SIR, I DID.

Q TELL THAT JURY WHAT WAS ON THAT CUP.

A THIS CUP WAS A STYROFOAM CUP APPROXIMATELY THIS BIG (INDICATES) AND IT'S WHITE AND THE STYROFOAM CUP HAD DRAWINGS ON IT THAT MR. KELLY MADE WITH A PEN DEPICTING, I THINK, WHAT I REMEMBER IS A MAN HOLDING A KNIFE CUTTING OFF A CHICKEN HEAD AND – LIKE A COMIC STRIP, SOMETHING TO THAT NATURE AND THERE WAS, YOU KNOW, WORDS ALONG WITH THIS COMIC STRIP THAT I CAN'T REMEMBER, BUT THAT'S BASICALLY IT.

Q THAT WAS HIS PERSONAL CUP?

A YES.

Q HAD THAT CUP FOR MORE THAN A DAY OR SO, WOULD YOU SAY?

A OH, YES, YES.

Q ANSWER ANY QUESTIONS THEY MAY HAVE.

[1756] **MATTHEW MCCORMACK – CROSS**
BY MR. KIRKLAND

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Q AND YOU KNOW THAT 90 PERCENT OF THE PEOPLE IN PRISON CAN WHIP HIS TAIL, DON'T YOU?

A NO, NOT 90 PERCENT.

Q WELL, HE WOULD BE FRESH MEAT, WOULDN'T HE?

A WELL, I MEAN, EVERYBODY – EVERYBODY THAT COMES IN IS PRETTY MUCH CONSIDERED AT CERTAIN INSTITUTIONS – YOU KNOW, ANYBODY THAT COMES IN AND ACTS A CERTAIN WAY – IN PRISON, IT'S NOT LIKE ON THE STREET WHERE YOU GO TO A BAR AND YOU SEE A BIG GUY AND YOU SAY, WELL, I DON'T WANT TO MESS WITH HIM, HE'S BIG. IT'S NOT LIKE THAT IN PRISON ANYMORE [1757] BECAUSE SMALL GUYS HAVE JUST AS – JUST AS MUCH HEART. AND I'VE SEEN THIS. I'VE SEEN GUYS SMALLER THAN WILLIAM KELLY BEAT UP GUYS BIGGER THAN YOU.

Q THAT'S RIGHT. AND YOU'VE GOT TO SHOW YOU'VE GOT A HEART? YOU'VE GOT TO SHOW YOU'RE TOUGH OR ELSE PEOPLE TAKE ADVANTAGE OF YOU, DON'T THEY?

A WHEN THAT TIME COMES, YES.

Q THAT'S RIGHT. YOU'VE GOT TO STAND YOUR GROUND?

A AND THE MAIN REASON FOR THAT IS THAT IF YOU LET SOMEBODY WALK ALL OVER YOU AND THEY – OTHER PEOPLE SEE THAT, THEN EVERYBODY WILL DO THE SAME THING.

Q THAT'S RIGHT. AND YOU LIVE WITH THAT EVERY SINGLE DAY OF YOUR LIFE IN A PRISON. NIGHT AND DAY YOU LIVE WITH THAT ANXIETY, DON'T YOU, THAT SOMEBODY IS GOING TO COME FOR YOU?

A YES. IT IS A LOT OF ANXIETY. WELL, NOT FOR ME PARTICULARLY, AND – WELL, NOT FOR A LOT OF PEOPLE REALLY WHERE I'M AT BECAUSE IF YOU KNOW HOW TO CARRY YOURSELF, THEN – AND YOU DON'T HAVE TO CARRY YOURSELF ALL TOUGH BECAUSE REALLY THE ONES THAT CARRY THEMSELVES TOUGH ARE THE ONES THAT GET GOT FIRST. YOU HAVE TO JUST CARRY YOURSELF LIKE YOU HAVE A HEAD ON YOUR SHOULDERS AND YOU'RE NOT GOING TO BE PUSHED AROUND.

Q BUT YOU TOLD BILLY KELLY ENOUGH ABOUT PRISON WHERE HE DECIDED HE'D RATHER DIE, RIGHT?

[1758] A I TOLD HIM THAT IF IT WAS MY DECISION, ME, PERSONALLY, THAT I WOULD RATHER SIT IN DEATH ROW FOR TEN YEARS AND GO AHEAD AND BE PUT TO DEATH THAN TO SPEND MY NATURAL LIFE IN PRISON, YES.

———

[1759] **MATTHEW MCCORMACK – RE-CROSS BY MR. KIRKLAND**

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Q MR. MCCORMACK, YOU TALKED [SIC] MR. KELLY HOW TO CARRY HIMSELF SO HE WOULDN'T HAVE TROUBLE, DIDN'T YOU?

A THAT'S RIGHT.

Q THANK YOU.

THE COURT: ANYTHING ELSE.

MR. KIRKLAND: I HAVE ONE MORE QUESTION.

RECROSS EXAMINATION

BY MR. KIRKLAND:

Q YOU TAUGHT HIM BECAUSE HE DOESN'T KNOW HOW TO CARRY HIMSELF, DOES HE?

A I'VE SEEN MR. KELLY HANDLE HIMSELF.

Q HE'S LEARNING?

A YES.

Q IT'S A WHOLE NEW BALLGAME WHEN YOU GET OUT THERE IN THE POPULATION WITH THE REAL CONS, ISN'T IT?

A YES.

Q ALL RIGHT.

[1759] **MARK WHARTON – DIRECT BY MR. HUMPHRIES**

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MR. HUMPHRIES: THE STATE CALLS MARK WHARTON TO THE STAND, PLEASE.

MARK WHARTON,

[1760] FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR LAST, PLEASE.

THE WITNESS: MY NAME IS MARK WHARTON, W-H-A-R-T-O-N.

DIRECT EXAMINATION

BY MR. HUMPHRIES:

Q WITH WHOM ARE YOU EMPLOYED?

A LEXINGTON COUNTY DETENTION CENTER.

Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

A SEVEN YEARS.

Q AND WHAT IS YOUR POSITION AT THE DETENTION CENTER?

A MASTER CORRECTIONAL OFFICER.

Q LET ME ASK YOU THIS. OFFICER WHARTON, DID YOU HAVE AN OCCASION ON MAY THE 1ST, 1997, TO COME INTO CONTACT WITH THE DEFENDANT, WILLIAM ARTHUR KELLY, SHORTLY AFTER AN INTERVIEW IN AN ATTORNEY ROOM?

A YES, I DID. HE WAS RETURNING FROM THE ATTORNEY'S ROOM. HE WAS PATTED DOWN AND CHECKING HIS CIGARETTE PACK –

Q NOW, WHO WAS DOING ALL OF THIS PATTING DOWN?

A I WAS.

Q IS THAT PROTOCOL AFTER YOU MEET WITH PEOPLE WHO COME FROM OUTSIDE THE JAIL?

A YES, SIR.

[1761] Q IS THAT SOMETHING THAT YOU USUALLY DO OR WERE YOU STANDING IN FOR SOME OTHER OFFICERS?

A I WAS STANDING IN FOR ANOTHER OFFICER.

Q YOU'RE A SUPERVISOR AND THAT TYPICALLY IS NOT WITHIN YOUR DUTIES, IS THAT CORRECT?

A CORRECT.

Q PATTING MR. KELLY DOWN, WHAT, IF ANYTHING, DID YOU DISCOVER ON HIS PERSON OR IN HIS EFFECTS?

A NOTHING ON HIS PERSON OTHER THAN IN HIS RIGHT POCKET, HE HAD A PACK OF CIGARETTES WHICH I CHECKED. I WAS NOT LOOKING FOR ANYTHING UNUSUAL. POSSIBLY ANOTHER BRAND OF CIGARETTES. THEY WERE ALLOWED GENERIC AND SOMETIMES THEY CAN SNEAK BRAND NAMES IN. LOOKING IN THE CIGARETTE

PACK, I FOUND A TOOTHBRUSH WITH A METAL OBJECT MELTED INTO IT.

Q THAT TYPE OF OBJECT IS TYPICALLY CALLED WHAT?

A A SHANK.

Q THIS OBJECT TO WHICH YOU REFER IS IT CAPABLE OF INFLICTING PHYSICAL HARM?

A YES, IT IS.

Q IS IT WHAT WE CALL CONTRABAND?

A YES, SIR.

Q WHAT DID YOU DO AS A RESULT OF TAKING THAT SHANK FROM MR. KELLY?

A I INFORMED KELLY THAT HE WAS ON CONFINEMENT AND HIS ITEMS WERE TAKEN THAT ARE NOT ALLOWED WHILE YOU ARE ON [1762] CONFINEMENT AND HE WAS PLACED IN A CONFINEMENT ROOM.

Q NOW, CONFINEMENT, THAT'S THE HARSHEST SANCTION IN THE DETENTION CENTER, IS IT NOT?

A YES, IT IS.

Q AND FOR HOW LONG DID MR. KELLY STAY ON CONFINEMENT FOR THIS SHANK?

A HE HAD TO STAY ON TILL HE HAD HIS ADJUSTMENT HEARING, WHICH AT THAT TIME WAS EVERY WEDNESDAY. I WAS THERE. I DON'T REMEMBER WHO RAN THE ADJUSTMENT HEARING. I THINK HE WAS THERE FOR SEVEN DAYS TOTAL.

Q LET ME ASK YOU THIS. YOU WERE THERE AT THE ADJUSTMENT, WHICH I GUESS IS SOME SORT OF INFORMAL HEARING TO DETERMINE WHAT THE SANCTION SHOULD BE FOR THIS TYPE OF INCIDENT, IS THAT CORRECT?

A YES, IT IS.

Q DID MR. KELLY HAVE SOME EXPLANATION FOR WHY HE HAD THE SHANK IN HIS POSSESSION AS YOU RECALL?

A HE SAID IT WAS FOR HIS FINGERNAILS.

Q WELL, NOW, DO INMATES NOT HAVE ACCESS TO NAIL CLIPPERS AT THE DETENTION CENTER?

A YES, THEY DO. THEY CAN GO TO MEDICAL AND CAN REQUEST USING THEM THERE.

Q THANK YOU.

[1764] **MARK WHARTON - CROSS**
BY MR. KIRKLAND

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Q SO WE'RE TALKING ABOUT TWO AND A HALF YEARS. HE'S NEVER HURT ANYBODY? NO?

A NOT THAT I KNOW OF.

Q HE'S NEVER BEEN IN A FIGHT TO YOUR KNOWLEDGE?

A POSSIBLY, BUT NONE THAT I RECALL THAT I RESPONDED TO.

Q ALL YOU'VE EVER KNOWN IS HE MIGHT RUN HIS MOUTH FROM TIME TO TIME?

A YES.

Q INMATES DO THAT?

A YES, THEY DO.

Q THEY ALL DO, DON'T THAT [sic]?

A YES, THEY DO.

Q ALL RIGHT. AND THEY USE PROFANITY?

[1765] A YES, THEY DO.

Q I MEAN, THAT'S WHAT JAIL LIFE IS, ISN'T IT?

A YES, IT IS.

Q AND IT'S PRETTY TERRITORIAL, TOO. I MEAN, YOU HAVE TO WATCH YOURSELF AND WATCH YOUR FRIENDS, DON'T YOU?

A MORE IN PRISON. LITTLE BIT LESS IN JAIL, BUT, YES.

Q OKAY. EVEN MORE SO IN PRISON, ISN'T IT? AND INMATES SOMETIMES HAVE SHANKS JUST TO PROTECT THEMSELVES, DON'T THEY?

A YES, SIR.

Q I MEAN, YOU DON'T KNOW WHO IS BEHIND YOU, DO YOU?

A NO, SIR.

Q IT'S DOG EAT DOG IN THERE, ISN'T IT?

A YES, IT IS.

Q AND THE BIG DOG WINS?

A NOT NECESSARILY.

Q WELL, IF Y'ALL DON'T GET THEM FIRST, RIGHT?

A I WOULDN'T SAY THAT.

Q OKAY. WHAT WOULD YOU SAY?

A I SAY IT DEPENDS. A SMALL GUY CAN KNOCK A BIG GUY DOWN.

[1767] **EDWARD D. BRYANT – DIRECT BY MR. CHASE**

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MR. CHASE: PLEASE THE COURT, YOUR HONOR. THE STATE CALLS DEWAYNE BRYANT TO THE STAND.

EDWARD D. BRYANT,
[1768] FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: STATE YOUR FULL NAME, SPELLING YOUR LAST.

THE WITNESS: EDWARD D. BRYANT, B-R-Y-A-N-T.

DIRECT EXAMINATION

BY MR. CHASE:

Q MR. BRYANT, WHERE DO YOU LIVE?

A LEXINGTON.

Q HOW LONG HAVE YOU LIVED IN LEXINGTON COUNTY?

A ABOUT THREE YEARS NOW.

Q ARE YOU WORKING?

A YES, SIR.

Q WHERE ARE YOU WORKING?

A T AND J FENCE.

Q ABOUT HOW MANY HOURS A WEEK DO YOU WORK?

A I WORK ANYWHERE FROM 60 TO 65 HOURS A WEEK.

Q A FULL WEEK?

A YES, SIR.

Q MR. BRYANT, I JUST WANT TO GO AHEAD AND GET THIS OUT OF THE WAY. ARE YOU CURRENTLY ON PROBATION?

A YES, SIR.

Q WHAT ARE YOU ON PROBATION FOR?

A C.S.C.

Q DO YOU HAVE ANY PENDING CHARGES RIGHT NOW?

A NO, SIR.

[1769] Q NOW, PRIOR TO THE TIME THAT YOU WERE PLACED ON PROBATION, DID YOU - WERE YOU HOUSED OVER AT THE LEXINGTON COUNTY DETENTION CENTER?

A YES, SIR.

Q WHILE YOU WERE THERE, DID YOU EVER COME IN CONTACT BY A GUY - THE GUY BY THE NAME OF WILLIAM ARTHUR KELLY?

A YES, SIR.

Q WHERE WOULD YOU SEE WILLIAM ARTHUR KELLY?

A I WAS ON THE SAME WING HE WAS ON.

Q IF YOU ARE ON THE SAME WING WITH AN INMATE, DO YOU HAVE A LOT OF CONTACT WITH THEM?

A YES, EVERYDAY.

Q DO YOU HAVE THE OPPORTUNITY TO MINGLE WITH THEM?

A YES, SIR.

Q WHEN YOU ARE LET OUT OF YOUR CELL, YOU CAN MOVE AROUND AND BE WITH EACH OTHER?

A YES, SIR.

Q DID YOU EVER HEAR WILLIAM KELLY TALK ABOUT ESCAPING?

A YES, AT ONE TIME.

Q WHAT DID YOU HEAR WILLIAM ARTHUR KELLY TALK ABOUT?

A I JUST KIND OF OVERHEARD IT OUTSIDE OF HIS DOOR AROUND HIS CELL.

Q WHAT DID HE SAY?

A WELL, AT THAT TIME, HE WAS TALKING ABOUT TAKING A NURSE HOSTAGE.

[1770] Q TAKING A NURSE HOSTAGE?

A YES SIR.

Q DID YOU EVER SEE HIM AROUND OTHER INMATES?

A YES, SIR.

Q DID YOU EVER SEE HIM GET CONFRONTATIONAL WITH SOME OF THOSE INMATES?

A YES, A FEW OF THEM. YES, SIR.

Q WHAT WOULD HE DO?

A MOSTLY BE - IT'S EITHER WORDS OR A LITTLE SHOVING AND STUFF MOST OF THE TIME.

Q DURING THE TIME THAT YOU WERE ON THE SAME WING WITH MR. KELLY, DID YOU EVER HEAR HIM TALK ABOUT WHAT HE WAS CHARGED WITH DOING?

A YES, SIR, SEVERAL TIMES.

Q WHAT DID YOU HEAR WILLIAM ARTHUR KELLY SAY ABOUT THAT CRIME?

A MOST THE TIME WHEN I WAS AROUND, HE MOSTLY BE BRAGGING ABOUT IT.

Q DO YOU REMEMBER ANYTHING PARTICULAR THAT HE MIGHT HAVE SAID ABOUT THAT?

A YES. A FEW TIMES HE WOULD BE JOKING AROUND SAYING THE ONLY REASON HE DIDN'T CUT HER HEAD OFF BECAUSE HE COULDN'T GET THROUGH HER NECK BONE.

Q HE SAID THAT MORE THAN ONCE?

A YES, SIR.

[1771] Q COULDN'T GET THROUGH THE NECK BONE, THAT'S WHY HE DIDN'T CUT HER HEAD OFF?

A YES, SIR.

Q DID HE HAVE A NICKNAME ON THE FLOOR?

A YES, SIR. WELL, HE REQUESTED TO BE CALLED K.F.C.

Q K.F.C.?

A YES, SIR.

Q LIKE FOR KENTUCKY FRIED CHICKEN?

A YES, SIR.

Q LET ME ASK YOU THIS, MR. BRYANT, DID YOU EVER SEE MR. KELLY WITH A CUP WHILE HE WAS ON THE FLOOR?

A YES, SIR, I DID.

Q WHAT KIND OF CUP WAS THAT?

A IT WAS A WHITE STYROFOAM CUP. THEY HAVE LIKE A PROGRAM WHEN YOU GET THE BEST FLOOR, YOU GET POPCORN AND STUFF AT NIGHT AND IT WAS A POPCORN CUP. I'D SAY ABOUT A TWENTY-OUNCE CUP OR SOMETHING LIKE THAT.

Q DO YOU REMEMBER ANYTHING BEING ON THAT CUP?

A YES. THERE WAS A CHICKEN WITH HIS HEAD CUP [SIC] OFF WITH BLOOD DRIPPING OUT OF IT AND THERE WAS A KNIFE UP ABOVE IT AND THEN ON THE FRONT SIDE, IT HAD K.F.C. ON IT.

Q THANK YOU.

[1773] **EDWARD D. BRYANT – CROSS BY MR. KIRKLAND**

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Q WHEN YOU FIRST COME INTO THE DETENTION CENTER, WOULD YOU AGREE WITH ME YOU'VE GOT TO KIND OF GET YOUR TURF AND GET SECURE IN WHERE YOU ARE AND POSITION YOURSELF WITH THE OTHER INMATES?

A YES, SIR.

Q THAT'S PRETTY COMMON, RIGHT?

A YES, SIR.

Q AND WOULD YOU ALSO AGREE WITH ME THAT YOU'VE GOT TO LET THE OTHER INMATES

KNOW YOU ARE TOUGH OR YOU CAN STAND YOUR GROUND?

A MOSTLY, YES, SIR.

Q AND ONE OF THE WAYS SOME INMATES DO THAT TO PROTECT THEMSELVES AND TO FEEL SECURE IS TO KIND OF SAY, LOOK WHAT I DID, DON'T MESS WITH ME, ISN'T THAT RIGHT?

A YES, SIR.

Q ALL RIGHT. BECAUSE IF YOU GO IN THERE AND PEOPLE DON'T THINK YOU'RE TOUGH, SOMEBODY IS GOING TO PICK ON YOU?

A YES, SIR.

Q THEY'RE GOING TO TEST YOU, RIGHT?

A YES, SIR.

Q THEY GOING TO PUSH YOU AS FAR AS THEY CAN, IS THAT RIGHT?

[1774] A YES, SIR.

Q SO IF YOU DON'T LET SOMEBODY KNOW YOU'RE A TOUGH DUDE, YOU MIGHT BE CLEANING THEIR SINK, CLEANING THEIR TOILET, WON'T YOU?

A YEAH.

Q YOU MIGHT BECOME THEIR BOYFRIEND, MIGHTN'T YOU?

A POSSIBLE.

Q SO BILLY KELLY LET PEOPLE KNOW WHAT HE DID?

A YES, SIR.

Q IT SCARED YOU, DIDN'T IT?

A YES, SIR, IT DID.

Q IT SCARED A LOT OF PEOPLE, DIDN'T IT?

A YEAH.

Q IT SERVED ITS PURPOSE, RIGHT?

A YES, SIR.

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[1781] **STEVEN M. DERRICK,**

BEING ALREADY DULY SWORN, RETURNED TO THE WITNESS STAND AND TESTIFIED AS FOLLOWS:

THE COURT: ALL RIGHT.

INSOFAR AS THE QUESTIONABLE OR THE OBJECTIONABLE PHOTOGRAPHS ARE CONCERNED, LET'S DEAL WITH THOSE.

[1782] THE SOLICITOR: YOUR HONOR, WITH THIS WITNESS, WE HAVE PHOTOGRAPHS – A GREAT NUMBER OF THEM MARKED IN EVIDENCE. I THINK THERE ARE QUESTIONS WITH SIX OF THEM AND THOSE NUMBERS ARE 73, 76, 75, 84, 89, 90, IS THAT CORRECT.

MS. FULLWOOD: THAT'S RIGHT.

YOUR HONOR, WE OBJECT TO THEM ON THE GROUNDS THAT THE POTENTIAL PREJUDICE IN THOSE PHOTOGRAPHS OUTWEIGHS ANY PROBATIVE VALUE THEY MIGHT HAVE.

THE COURT: ALL RIGHT.

SOLICITOR, YOU HAVE ANY ARGUMENT YOU WANT TO MAKE CONCERNING THESE PHOTOGRAPHS?

THE SOLICITOR: JUST TO CITE SOME CASES, YOUR HONOR. *STATE VERSUS KORNAHRENS* IS THE LEADING CASE AND I KNOW I DON'T NEED TO CITE THAT CASE FOR YOUR HONOR. YOU ARE MORE FAMILIAR WITH IT THAN ANY OF US ARE. WITHIN THAT, THE SUPREME COURT TALKED ABOUT DISPLAYING VARIOUS PHOTOGRAPHS. IN THIS CASE, IT WAS THREE BODIES THAT WERE IN A GRAVE THAT MR. KORNAHRENS HAD PUT THEM IN AFTER HE MURDERED THEM.

AND THE SUPREME COURT TALKED ABOUT THE PHOTOGRAPHS, THAT WHILE THEY ARE NOT ADMISSIBLE IN THE GUILT PHASE, THEY ARE PROPERLY ADMITTED IN THE PENALTY PHASE TO SHOW THE CHARACTER AND CHARACTERISTICS OF THE DEFENDANT, THE CIRCUMSTANCES SURROUNDING THE CRIME AND TO SHOW THE NATURE IN WHICH THE CRIME WAS COMMITTED.

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[1784] THE SOLICITOR: AS AN OFFICER OF THE COURT, I CAN TELL YOUR HONOR THAT THESE PHOTOGRAPHS WILL BE NECESSARY TO ASSIST DR. SEXTON IN GIVING MORE DETAILED TESTIMONY AS TO THE WOUNDS. HE'S ALREADY TESTIFIED THAT THERE WERE OVER THIRTY-ONE OR APPROXIMATELY THIRTY-ONE STAB WOUNDS FROM VARIOUS

DIRECTIONS OF VARIOUS SIZES FROM THE FRONT TO THE [1785] NECK, TO THE HEAD, AND DOWN THE BACK, ALL THE WAY DOWN TO THE LOWER PART OF THE VICTIM'S BACK. AND THAT DID NOT INCLUDE THE SLICE WOUNDS TO THE NECK AND I THINK TO THE SIDE OF THE FACE. SO WE'VE GOTTEN WELL INTO THE – THESE WOULD BE ALSO, YOUR HONOR, HERE *STATE VERSUS POWERS* IS ANOTHER CASE IN WHICH ITS CITED FOR AUTOPSY CASES. FURTHER CASES OF *STATE VERSUS MIDDLETON, STATE VERSUS KORNAHRENS, STATE VERSUS FRANKLIN, STATE VERSUS LUKE WILLIAMS, STATE VERSUS RAYMOND PATTERSON, STATE VERSUS RAY* – WHICH I THINK YOU TRIED –

THE COURT: YES, SIR.

THE SOLICITOR: – AND *STATE VERSUS BENJI POWERS* SAID THAT WE HAVE PHOTOGRAPHS TO SHOW THE MANNER IN WHICH THE WOUNDS WERE INFLICTED, THE CHARACTERISTICS – THE CHARACTER OF THE DEFENDANT AND THE CIRCUMSTANCES SURROUNDING THE CRIME, THEN THEY WOULD BE ADMISSIBLE.

I CAN TELL YOUR HONOR. THAT WE HAVE TAKEN THOSE FROM A BUNCH OF PICTURES WE HAD. WE HAD SOME THAT WERE MUCH MORE OFFENSIVE THAN THOSE AND THOSE ARE THE ONES THAT WE WENT THROUGH AND SELECTED OUT OF MANY, MANY MORE.

WE SUBMIT THOSE ARE PROPER UNDER 403 AND THE CASE LAW TO SHOW THE CHARACTER, THE CHARACTERISTICS OF THE DEFENDANT, TO SHOW

THE MANNER IN WHICH THE CRIME WAS COMMITTED, AND ALSO MOST IMPORTANTLY OR AS EQUALLY IMPORTANT, UNDER *STATE VERSUS FRANKLIN* AND *STATE* [1786] *VERSUS ARD*, I BELIEVE IT WAS, IT GOES TO PROVE AGGRAVATING CIRCUMSTANCES, PARTICULARLY PHYSICAL TORTURE.

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[1789] THE SOLICITOR: AND THE LAST THING WE HAVE, YOUR HONOR, THIS CONCERNS ITEMS ALREADY ADMITTED INTO EVIDENCE AND IT CONCERNS THE VICTIM'S SHIRT, PANTS, JACKET AND BRA. AND WHAT WE HAVE DONE IS PUT THIS ON A FIGURE WITHOUT ANY HEAD OR ANYTHING AND DR. SEXTON WILL USE THIS TO SHOW THE STAB WOUNDS THROUGH THE CLOTHING. ALL OF THESE ITEMS HAVE BEEN PUT INTO EVIDENCE. THE BRA AND THE JACKET ON HANGERS WHICH WILL BE TAKEN AWAY FROM IT AND THEN WHAT YOU HAVE IS HOW - BECAUSE WE COULDN'T - WE DIDN'T DEMONSTRATE THE SHIRT IN THE GUILT PHASE, WE HAD IT IN EVIDENCE, BUT TO SHOW HOW THE STABS WERE MADE WITH THE CLOTHES ON.

MS. FULLWOOD: YOUR HONOR -

THE COURT: YES, MA'AM.

MS. FULLWOOD: WE OBJECT. I THINK IT'S IRRELEVANT WHETHER OR NOT THESE ITEMS HAVE ALREADY BEEN PLACED IN EVIDENCE. I BELIEVE WE OBJECTED TO ENTRY OF EVERY EVIDENCE EXCEPT FOR THIS JACKET ANY WAY.

IN ANY EVENT, THEY HAVE BEEN ALTERED TO SET UP A [1790] DISPLAY. IT IS GORY. IT IS GRUESOME. DR. SEXTON HAS THIS TO EXPLAIN HIS TESTIMONY. HE HAS THE PHOTOGRAPHS TO EXPLAIN HIS TESTIMONY. THIS DOESN'T GO TO PROVE STATUTORY AGGRAVATING CIRCUMSTANCES. THIS DOESN'T GO TO PROVE CIRCUMSTANCES OF THE CRIME. THE ONLY THING, THE ONLY PURPOSE I COULD SEE IN PUTTING THIS INTO EVIDENCE IS TO SHOCK THE JURY. IT IS SHOCKING. IT IS GRUESOME. IT IS BLOODY. I THINK IT NEEDS TO BE EXCLUDED UNDER 403.

THE SOLICITOR: THAT'S WHY I DIDN'T DO IT IN THE GUILT PHASE. I PURPOSEFULLY KEPT IT AWAY IN THE GUILT PHASE. BUT IN THE PENALTY PHASE, I THINK, IT GOES TO THE MANNER IN WHICH THE CRIME WAS COMMITTED. THERE'S BEEN SOME CONTENTION ABOUT THIS JACKET BEING AROUND HER HANDS WHEN YOU'VE GOT STAB WOUNDS IN THE TOP OF THE JACKET UP HERE. YOU'VE GOT THE BRA THAT'S BEEN CUT. WE'VE GOT THIS SHIRT THAT SHE WAS WEARING WHEN SHE WAS STABBED. EVEN THE PANTS SHOW THE STAB MARKS. SO IT SHOWS THE COMMISSION OF THE CRIME, THE MANNER THE CRIME WAS COMMITTED. IT GOES TO THE PHYSICAL TORTURE ASPECT. IT GOES TO THE CHARACTERISTICS OF THE DEFENDANT.